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EXTRAORDINARY

PART II—Section 2

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LOK SABHA

The following Bill was introduced in Lok Sabha on the 24th April, 1961:—

*BILL No. 27 OF 1961

A Bill to consolidate and amend the law relating to income-tax and super-tax.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Income-tax Act, 1961.

(*2*) It extends to the whole of India.

(*3*) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*1*) "agricultural income" means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in India or is subject to a local rate assessed and collected as such by officers of the Government;

(*b*) any income derived from such land by—

(*i*) agriculture; or

(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a

*The President has, in pursuance of clauses (1) and (3) of article 117 and article 274 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

103 G. of I.—1.

cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature described in paragraph (*ii*) of this clause,

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (*ii*) and (*iii*) of sub-clause (*b*) is carried on.

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building;

(*2*) "annual value", in relation to any property, means its annual value as determined under section 23;

(*3*) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Income-tax under sub-section (*1*) of section 117;

(*4*) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252;

(*5*) "approved gratuity fund" means a gratuity fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part C of the Fourth Schedule;

(*6*) "approved superannuation fund" means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part B of the Fourth Schedule;

(*7*) "assessee" means a person by whom income-tax or super-tax or any other sum of money is payable under this Act, and includes—

(*a*) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act;

(8) "assessment" includes re-assessment;

(9) "assessment year" means the period of twelve months commencing on the 1st day of April every year;

(10) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income;

(11) "average rate of super-tax" means the rate arrived at by dividing the amount of super-tax calculated on the total income, by such total income;

4 of 1924. (12) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, moveable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;

(iii) agricultural land in India;

(15) "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;

(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax under sub-section (1) of section 117;

(17) "company" means—

(i) any Indian company, or

(ii) any association, whether incorporated or not and whether Indian or non-Indian, which is or was assessable or

11 of 1922. was assessed under the Indian Income-tax Act, 1922, as a company for the assessment year commencing on the 1st day of April, 1947, or which is declared by general or special order of the Board to be a company for the purposes of this Act;

(18) "company in which the public are substantially interested"—A company is said to be a company in which the public are substantially interested—

(a) if it is a company owned by the Government or in which not less than forty per cent. of the shares are held by the Government; or

(b) if it is a public company as defined in the Companies Act, 1956, and 1 of 1956.

(i) its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by, the Government or a corporation established by a Central, State or Provincial Act or the public (not including a company to which the provisions of section 104 apply);

(ii) the said shares were at any time during the relevant previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and

(iii) the affairs of the company, or the shares carrying more than fifty per cent. of its total voting power were at no time during the relevant previous year controlled or held by five or less persons.

Explanation 1.—In computing the number of five or less persons aforesaid,—

(i) the Government or any corporation established by a Central, State or Provincial Act or company to which the provisions of section 104 do not apply, shall not be taken into account, and

(ii) persons who are relatives of one another, and persons who are nominees of any other person together with that other person, shall be treated as a single person.

Explanation 2.—In its application to any such company as is referred to in sub-clause (2) of clause (iii) of section 109, sub-clause (b) shall have effect as if for the words "not less than fifty per cent." and "more than fifty per cent." the words "not less than forty per cent." and "more than sixty per cent." had been substituted;

2 of 1912.

(*19*) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State for the registration of co-operative societies;

1 of 1956.

(*20*) "director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956;

(*21*) "Director of Inspection" means a person appointed to be a Director of Inspection under sub-section (*1*) of section 117, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection;

(*22*) "dividend" includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its share-holders of all or any part of the assets of the company;

(*b*) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of preference shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(*c*) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;

(*d*) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not;

(*e*) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf, or for the individual benefit, of a shareholder, to the extent to which the company in either case possesses accumulated profits;

but "dividend" does not include—

(*i*) a distribution made in accordance with sub-clause (*c*) or sub-clause (*d*) in respect of any share issued for full

cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;

(ii) any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off.

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation;

(23) "firm", "partner" and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932; but the expression "partner" shall also include any person who being a minor, has been admitted to the benefits of partnership; 9 of 1932.

(24) "income" includes—

(i) profits and gains;

(ii) dividend;

(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;

(*vi*) any capital gains chargeable under section 45;

(*vii*) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;

(*25*) "Income-tax Officer" means a person appointed to be an Income-tax Officer under sub-section (*2*) of section 117;

(*26*) "Indian company" means a company formed and registered under the Companies Act, 1956, and includes— 1 of 1956.

(*i*) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir);

(*ii*) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State:

Provided that the registered office of the company in all cases is in India;

(*27*) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under sub-section (*1*) of section 117;

(*28*) "Inspector of Income-tax" means a person appointed to be an Inspector of Income-tax under sub-section (*2*) of section 117;

(*29*) "legal representative" has the meaning assigned to it in clause (*11*) of section 2 of the Code of Civil Procedure, 1908; of 1908.

(*30*) "non-resident" means a person who is not a "resident";

(*31*) "person" includes—

(*i*) an individual,

(*ii*) a Hindu undivided family,

(*iii*) a company,

(*iv*) a firm,

(*v*) an association of persons or a body of individuals, whether incorporated or not,

(*vi*) a local authority, and

(*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses;

(*32*) "person who has a substantial interest in the company", in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent. of the voting power;

(*33*) "prescribed" means prescribed by rules made under this Act;

(*34*) "previous year" means the previous year as defined in section 3;

(*35*) "principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(*36*) "profession" includes vocation;

(*37*) "public servant" has the same meaning as in section 21 of the Indian Penal Code; 45 of 1860.

(*38*) "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme formed under the Employees Provident Fund Act, 1952; 19 of 1952.

(*39*) "registered firm" means a firm registered under the provisions of clause (*a*) of sub-section (*1*) of section 185 or under that provision read with sub-section (7) of section 184;

(*40*) "regular assessment" means the assessment made under section 143 or section 144;

(*41*) "relative", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual;

(*42*) "resident" means a person who is resident in India within the meaning of section 6;

(43) "tax" means income-tax and super-tax chargeable under the provisions of this Act;

(44) "Tax Recovery Officer" means—

(i) a Collector;

(ii) an additional Collector or any other officer authorised to exercise the powers of a Collector under any law relating to land revenue for the time being in force in a State; or

(iii) any officer of the Central or a State Government who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer;

(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;

(46) "total world income" includes all income wherever accruing or arising, except incomes which are not included in the total income under any of the provisions of Chapter III and except any capital gains which are not includible in the total income of an assessee;

(47) "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law;

(48) "unregistered firm" means a firm which is not a registered firm.

3. (1) For the purposes of this Act, "previous year" means— "Previous year" defined.

(a) the financial year immediately preceding the assessment year; or

(b) if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, the twelve months ending on such date; or

(*c*) in the case of any person or business or class of person or business not falling within clause (*a*) or clause (*b*), such period as may be determined by the Board or by any authority authorised by the Board in this behalf; or

(*d*) in the case of a business or profession newly set up in the said financial year, the period beginning with the date of the setting up of the business or profession and—

(*i*) ending with the said financial year, or

(*ii*) if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, ending on that date, or

(*iii*) ending with the period, if any, determined under clause (*c*),

as the case may be; or

(*e*) in the case of a business or profession newly set up in the twelve months immediately preceding the said financial year—

(*i*) if the accounts of the assessee have been made up to a date within the said financial year and the period from the date of the setting up of the business or profession to such date does not exceed twelve months, then, at the option of the assessee, such period, or

(*ii*) if any period has been determined under clause (*c*), then the period beginning with the date of the setting up of the business or profession and ending with that period,

as the case may be; or

(*f*) where the assessee is a partner in a firm and the firm has been assessed as such, then, in respect of the assessee's share of the income of the firm, the period determined as the previous year for the assessment of the income of the firm; or

(*g*) in respect of profits and gains from life insurance business, the year immediately preceding the assessment year for which annual accounts are required to be prepared under the Insurance Act, 1938, or under that Act read with section 43 of the Life Insurance Corporation Act, 1956;

4 of 1938.
31 of 1956.

(2) Where an assessee has newly set up a business or profession in the said financial year and his accounts are made up to a date in the assessment year in respect of a period not exceeding twelve months from the date of such setting up, then, notwithstanding anything contained in sub-clause (*iii*) of clause (*d*) of sub-section (*1*), the assessee shall, in respect of that business or profession, at his option, be deemed to have no previous year for the said assessment

year under that clause and such option shall, in relation to the immediately succeeding assessment year, have effect as an option exercised under sub-clause (*i*) of clause (*e*) of sub-section (*1*).

(*3*) Subject to the other provisions of this section, an assessee may have different previous years in respect of separate sources of his income.

(*4*) Where in respect of a particular source of income or in respect of a business or profession newly set up, an assessee has once exercised the option under clause (*b*) or sub-clause (*ii*) of clause (*d*) or sub-clause (*i*) of clause (*e*) of sub-section (*1*) or has once been assessed, then, he shall not, in respect of that source, or, as the case may be, business or profession, be entitled to vary the meaning of the expression "previous year" as then applicable to him, except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose.

CHAPTER II

BASIS OF CHARGE

Charge of income-tax.

4. (*1*) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(*2*) In respect of income chargeable under sub-section (*1*), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Scope of total income.

5. (*1*) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(*a*) is received or is deemed to be received in India in such year by or on behalf of such person; or

(*b*) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(*c*) accrues or arises to him outside India during such year.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation.—Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Residence in India.

6. For the purposes of this Act—

(1) an individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or

(b) maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to one hundred and eighty-two days or more in that year and has been in India for any time in that year; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to thirty days or more in that year.

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be resident in India in any previous year, if—

(i) it is an Indian company; or

(ii) during that year, the control and management of its affairs is situated wholly in India.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

Income deemed to be received.

7. The following incomes shall be deemed to be received in the previous year:—

(*i*) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in Rule 8 of Part A of the Fourth Schedule,

(*ii*) the transferred balance in a recognised provident fund, to the extent provided in sub-rule (*4*) of Rule 11 of Part A of the Fourth Schedule.

Dividend income.

8. For the purposes of inclusion in the total income of an assessee, any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) or sub-clause (*d*) or sub-clause (*e*) of clause (*22*) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be.

Income deemed to accrue or arise in India.

9. (*1*) The following incomes shall be deemed to accrue or arise in India—

(*i*) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through or from any money lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situate in India;

Explanation.—In the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

(*ii*) income which falls under the head "Salaries", if it is earned in India;

(*iii*) income chargeable under the head "Salaries" payable in India by the Government to a citizen of India but which is paid outside India for rendering service outside India;

(*iv*) a dividend paid by an Indian company outside India.

(*2*) Notwithstanding anything contained in sub-section (*1*), any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th

day of August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India.

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included therein—

(1) agricultural income;

(2) any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family;

(3) any receipts which are of a casual and non-recurring nature, unless they are—

(i) capital gains, chargeable under the provisions of section 45; or

(ii) receipts arising from business or the exercise of a profession or occupation; or

(iii) receipts by way of addition to the remuneration of an employee;

(4) in the case of a non-resident, any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development or under a loan agreement between the Central Government and the Development Loan Fund of the United States of America or by any industrial undertaking or financial corporation in India under a loan agreement with the said Bank or Fund, as the case may be, which is guaranteed by the Central Government;

(5) subject to such conditions as the Central Government may prescribe, the value of any travel concession or assistance received by or due to any person, being a citizen of India, from his employer for himself, his wife and children, in connection with his proceeding on leave to his home-town or village in India;

(6) in the case of an individual who is not a citizen of India,—

(i) subject to such conditions as the Central Government may prescribe, passage moneys or the value of any

free or concessional passage received by or due to such individual from his employer for himself, his wife and children, in connection with his proceeding on home leave out of India;

(*ii*) the remuneration received by him as ambassador, high commissioner, envoy, minister, *charge d' affaires*, commissioner, counsellor or the secretary, adviser or attache of an embassy, high commission, legation or commission of a foreign State, for service in such capacity;

(*iii*) the remuneration received by him as a *consul de carriere*, whether called a consul-general, consul, vice-consul, consular agent, pro-consul or by any other name, of a foreign State for service in such capacity;

(*iv*) the remuneration received by him as a trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such in an honorary capacity), if the remuneration of the corresponding officials, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country;

(*v*) the remuneration received by him as a member of the staff of any of the officials referred to in clause (*ii*), clause (*iii*) or clause (*iv*), if the member—

(*a*) is a subject of the country represented;

(*b*) is not engaged in any business or profession or employment in India otherwise than as a member of such staff; and further, where the individual is a member of the staff of any official referred to in clause (*iv*), if the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Government;

(*vi*) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

(*a*) the foreign enterprise is not engaged in any trade or business in India;

(*b*) his stay in India does not exceed in the aggregate a period of ninety days in such previous year; and

(*c*) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act;

(*vii*) the remuneration received by him chargeable under the head "Salaries" for services rendered as a technician in the employment of the Government or of a local authority or of any corporation set up under any special law or in any business carried on in India, if he was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India to the extent mentioned below—

(*a*) where his contract of service was approved by the Central Government before the commencement of his service, such remuneration due to or received by him during the thirty-six months commencing from the date of his arrival in India; and where any such person continues to remain in employment in India after the expiry of the thirty-six months aforesaid and the tax on his income chargeable under the head "Salaries" is paid by the employer to the Central Government, the tax so paid by the employer for a period not exceeding twenty-four months following the expiry of the thirty-six months aforesaid;

(*b*) in other cases, such remuneration due to or received by him for the period of three hundred and sixty-five days in all commencing from the date of his arrival.

Explanation.—"Technician" means a person having specialised knowledge and experience in constructional or manufacturing operations, or in mining or in the generation or distribution of electricity or any other form of power, who is employed in India in a capacity in which such specalised knowledge and experience are actually utilised;

(*viii*) any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident, as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year;

(*7*) any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India;

(*8*) in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign

State (the terms whereof provide for the exemption given by this clause)—

(*a*) the remuneration received by him directly or indirectly from the Government of that foreign State for such duties, and

(*b*) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State;

(*9*) the income of any member of the family of any such individual as is referred to in clause (*8*) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State;

(*10*) any death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act or any payment of retiring gratuity received after the first day of June, 1953 under the New Pension Code applicable to the members of the Defence Services;

(*11*) any payment from a provident fund to which the Provident Funds Act, 1925 applies;

19 of 1925.

(*12*) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in Rule 8 of Part A of the Fourth Schedule;

(*13*) any payment from an approved superannuation fund made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary;

(*14*) any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite within the meaning of clause (*2*) of section 17 specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose;

(*15*) (*i*) monthly payment on the 15 Year Annuity Certificates issued by or under the authority of the Central Government or such other annuity certificates issued by or under the

authority of that Government as that Government may, by notification in the Official Gazette, specify in this behalf, to the extent to which the amounts of the certificates do not exceed in each case the maximum amount which is permitted to be invested therein;

(*ii*) interest on Treasury Savings Deposit Certificates, Post Office Cash Certificates, Post Office National Savings Certificates, National Plan Certificates, Twelve Year National Plan Savings Certificates and such other certificates issued by the Central Government as that Government may, by notification in the Official Gazette, specify in this behalf, and interest on deposits in Post Office Savings Banks, to the extent to which the amounts of such certificates or deposits do not exceed in each case the maximum amount which is permitted to be invested or deposited therein;

(*iii*) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949;

(*iv*) interest payable—

(*a*) by Government or a local authority on moneys borrowed by it from sources outside India;

(*b*) by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered into with any such financial institution in a foreign country as may be approved in this behalf by the Central Government by general or special order;

(*c*) by an industrial undertaking in India on any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of capital plant and machinery, in any case where the loan or debt is approved by the Central Government, having regard to its terms generally and in particular to the terms of its repayment;

(*16*) scholarships, granted to meet the cost of education;

(*17*) any daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof;

(*18*) any payment made, whether in cash or in kind, by the Central Government or any State Government in pursuance of gallantry awards instituted or approved by the Central Government;

(*19*) any amount received by the Ruler of an Indian State as privy purse under article 291 of the Constitution;

(20) the income of a local authority which is chargeable under the head "Interest on Securities", "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service within its own jurisdictional area;

(21) any income of a scientific research association for the time being approved for the purpose of clause (ii) of sub-section (1) of section 35 which is applied solely to the purposes of that association;

(22) any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit;

(23) any income of an association or institution established in India having as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may specify in this behalf from time to time by notification in the Official Gazette:

Provided that—

(i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established;

(ii) no part of the income of the association or institution is distributed in any manner to its members except as grants to any association or institution affiliated to it; and

(iii) the association or institution is, for the time being, approved for the purpose of this clause by the Central Government by general or special order;

(24) any income chargeable under the head "Interest on securities", "Income from house property" and "Income from other sources" of a registered union within the meaning of the Indian 16 of 1926. Trade Unions Act, 1926, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen;

(25) (i) interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds 19 of 1925. Act, 1925, applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities;

(ii) any income received by the trustees on behalf of a recognised provident fund;

(iii) any income received by the trustees on behalf of an approved superannuation fund;

(26) any income of a member of a Scheduled Tribe, as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, or in the Union Territories of Manipur and Tripura, provided such member is not in the service of Government.

Income from property (other than) business held for religious or charitable purposes.

11. (1) Subject to the provisions of sections 60 to 63 the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(i) (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five per cent. of the income from the property;

(b) income derived from property held under trust in part only for such purposes, to the extent to which such income is applied to such purposes in India; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent. of the income from the property held under trust in part:

Provided that so much of any income referred to in any of the preceding sub-clauses as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart.

(ii) income from property held under trust—

(a) created on or after the 1st day of April, 1952, for charitable purpose which tends to promote international welfare in which India is interested, applied to such purposes outside India, and

(b) for charitable or religious purposes, created before the 1st day of April, 1952, applied to such purposes outside India:

Provided that the Board by general or special order has directed in either case that it shall not be included in the total income of the person in receipt of such income.

Explanation.—In this section "property" does not include business.

Income from business carried on by trust and institutions for charitable or religious purposes.

12. (*1*) Subject to the provisions of sections 60 to 63, any income derived from business carried on by or on behalf of a trust for charitable or religious purposes and any income derived from business carried on by or on behalf of a religious or charitable institution shall not be included in the total income of the previous year of the trustees, or as the case may be, of the institution, if the conditions specified in sub-section (*2*) are satisfied.

(*2*) The provisions of sub-section (*1*) shall apply only if the following conditions are satisfied—

(*a*) the income is applied in India wholly for the purposes of the trust or institution, as the case may be; and

(*b*) the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution.

(*3*) Any income of a trust for charitable or religious purposes or of a religious or charitable institution, derived from voluntary contributions and applicable solely to charitable or religious purposes, shall not be included in the total income of the trustees or the institution, as the case may be.

Sections 11 and 12 not to apply in certain cases.

13. Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(*a*) the income of any trust or charitable or religious institution, if under the terms of the trust or the rules governing the institution any part of such income enures directly or indirectly for the benefit of any relative of the author of the trust or of the founder of the institution;

(*b*) that part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public.

Explanation.—In sections 11, 12 and 13, "trust" includes any other legal obligation.

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of income

Heads of income.

14. Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—

A.—Salaries.

B.—Interest on securities.

C.—Income from house property.

D.—Profits and gains of business or profession.

E.—Capital gains.

F.—Income from other sources.

A.—Salaries.

Salaries.

15. The following income shall be chargeable to income-tax under the head "Salaries"—

(*a*) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(*b*) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(*c*) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Deductions from salaries.

16. The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely:—

(*i*) any amount not exceeding five hundred rupees, expended by the assessee on the purchase of books and other publications necessary for the purpose of his duties;

(*ii*) in respect of any allowance in the nature of an entertainment allowance specifically granted to the assessee by his employer—

(*a*) in the case of an assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less; and

(*b*) in the case of any other assessee who is in receipt of such entertainment allowance and has been continuously in receipt of such entertainment allowance regularly from his present employer from a date before the 1st day of April, 1955, the amount of such entertainment allowance regularly received by the assessee from his present employer in any previous year ending before the 1st day of April, 1955, or a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or seven thousand five hundred rupees, whichever is the least;

(*iii*) any amount paid by the assessee in respect of taxes on professions, trades, callings or employments levied under any State or Provincial Act;

(*iv*) where the assessee is not in receipt of a conveyance allowance, whether as such or as part of his salary, and owns a conveyance which is used for the purposes of his employment, such sum as the Income-tax Officer may estimate in respect of

such use as representing the expenditure incurred by him in its maintenance and as representing its normal wear and tear;

(*v*) any amount actually expended by the assessee, not being an amount expended on the purchase of books or other publications, or on entertainment or on the maintenance of a conveyance, which, by the conditions of his service, he is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties.

"Salary" "perquisite" and "profits in lieu of salary" defined.

17. For the purposes of sections 15 and 16 and of this section,—

(*1*) "salary" includes—

(*i*) wages;

(*ii*) any annuity or pension;

(*iii*) any gratuity;

(*iv*) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(*v*) any advance by way of loan or otherwise of salary;

(*vi*) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under Rule 6 of Part A of the Fourth Schedule; and

(*vii*) the aggregate of all sums that are comprised in the transferred balance, as referred to in sub-rule (*2*) of Rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (*3*) thereof;

(*2*) "perquisite" includes—

(*i*) the value of rent-free accommodation provided to the assessee by his employer;

(*ii*) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

(*iii*) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(*a*) by a company to an employee who is a director thereof;

(*b*) by a company to an employee being a person who has a substantial interest in the company;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds eighteen thousand rupees;

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee; and

(v) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund, to effect an assurance on the life of the assessee or to effect a contract for an annuity;

(3) "profits in lieu of salary" includes—

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(ii) any payment [other than any payment referred to in clause (10), clause (11) or clause (12) of section 10], due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions.

B.—Interest on securities

Interest on securities.

18. (1) The following amounts due to an assessee in the previous year shall be chargeable to income-tax under the head "Interest on securities",—

(i) interest on any security of the Central or State Government;

(ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

(2) Nothing contained in sub-section (1) shall be construed as precluding an assessee from being charged to income-tax in respect of any interest on securities received by him in a previous year if such interest had not been charged to income-tax for any earlier previous year.

Deductions from interest on securities.

19. Subject to the provisions of section 21, the income chargeable under the head "Interest on securities" shall be computed after making the following deductions—

(*i*) any reasonable sum expended by the assessee for the purpose of realising such interest;

(*ii*) any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee.

Deductions from interest on securities in the case of a banking company.

20. (*1*) In the case of a banking company—

(*i*) the sum to be regarded as a sum reasonably expended for the purpose referred to in clause (*i*) of section 19 shall be an amount bearing to the aggregate of its expenses as are admissible under the provisions of sections 30, 31, 36 and 37 [other than clauses (*iii*), (*vi*) and (*vii*) of sub-section (*1*) of section 36] the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under section 18 bear to the gross receipts of the company from all sources which are included in the profit and loss account of the company;

(*ii*) the amount to be regarded as interest payable on moneys borrowed for the purpose referred to in clause (*ii*) of section 19 shall be an amount which bears to the amount of interest payable on all moneys borrowed by the company the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under section 18 bear to the gross receipts from all sources which are included in the profit and loss account of the company.

(*2*) The expenses deducted under clauses (*i*) and (*ii*) of sub-section (*1*) shall not again form part of the deductions admissible under sections 30 to 37 for the purposes of computing the income of the company under the head "Profits and gains of business or profession".

Explanation.—For the purposes of this section, "moneys borrowed" includes moneys received by way of deposits.

Amounts not deductible from interest on securities.

21. Notwithstanding anything contained in sections 19 and 20, any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B, and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted in computing the income chargeable under the head "Interest on securities".

C.—Income from house property

Income from house property.

22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

Annual value how determined.

23. (*1*) For the purposes of section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year:

Provided that where the property is in the occupation of a tenant and the taxes levied by any local authority in respect of the property are, under the law authorising such levy, payable wholly by the owner, or partly by the owner and partly by the tenant, a deduction shall be made equal to the part, if any, of the tenant's liability borne by the owner.

Explanation.—For the purposes of this sub-section in the case of a property the construction of which was completed before the 1st day of April, 1950, the total amount of such taxes, and in the case of any other property, one-half of the total amount of such taxes shall be deemed to be the tenant's liability:

Provided further that in the case of a building comprising one or more residential unit the erection of which is begun and completed after the 1st day of April, 1961, the annual value as determined under this sub-section shall, for a period of three years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(*i*) in respect of any residential unit whose annual value does not exceed six hundred rupees, by the amount of such annual value;

(*ii*) in respect of any residential unit whose annual value exceeds six hundred rupees, by an amount of six hundred rupees;

so, however, that the income in respect of any residential unit is in no case a loss.

(*2*) Where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall first be determined as in sub-section (*1*) and further be reduced by one-half of the amount so determined or one thousand eight hundred rupees, whichever is less:

Provided that the sum so arrived at shall not exceed ten per cent. of the total income of the owner.

Explanation.—Where any such residential unit as is referred to in the second proviso to sub-section (*1*) is in the occupation of the owner for the purposes of his own residence, nothing contained in that clause shall apply in computing the annual value of that residential unit.

(*3*) Where the property referred to in sub-section (*2*) consists of one residential house only and it cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house shall—

(*a*) if the house was not actually occupied by the owner during the whole of the previous year, be taken to be *nil*, or

(*b*) if the house was actually occupied by the owner for a fraction of the previous year, be taken to be that fraction of the annual value determined under sub-section (*2*):

Provided that the following conditions are in either case fulfilled:—

(*i*) the house is not actually let, and

(*ii*) no other benefit therefrom is derived by the owner.

Deductions from income from house property.

24. (*1*) Income chargeable under the head "Income from house property" shall, subject to the provisions of sub-section (*2*), be computed after making the following deductions, namely:—

(*i*) in respect of repairs,—

(*a*) where the property is in the occupation of the owner, or where the property is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of the annual value;

(*b*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs,—

(*i*) the excess of the annual value over the amount of rent payable for a year by the tenant; or

(*ii*) a sum equal to one-sixth of the annual value,

whichever is less;

(*ii*) the amount of any premium paid to insure the property against risk of damage or destruction;

(*iii*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge;

(*iv*) where the property is subject to an annual charge, not being a capital charge, the amount of such charge;

(*v*) where the property is subject to a ground rent, the amount of such ground rent;

(*vi*) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital;

(*vii*) any sums paid on account of land revenue in respect of the property;

(*viii*) any sums spent to collect the rent from the property, not exceeding six per cent. of the annual value of the property;

(*ix*) where the property is let and was vacant during a part of the year, that part of the annual value which is proportionate to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied; and

(*x*) subject to such rules as may be made in this behalf, the amount in respect of rent from property let to a tenant which the assessee cannot realise.

(*2*) The total amount deductible under sub-section (*1*) in respect of property of the nature referred to in sub-section (*3*) of section 23 shall not exceed the annual value of the property as determined under section 23.

Amounts not deductible from income from house property.

25. Notwithstanding anything contained in section 24, any annual charge or interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted in computing the income chargeable under the head "Income from house property".

Property owned by co-owners.

26. Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall

not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

"Owner of house property", "annual charge", etc., defined.

27. For the purposes of sections 22 to 26—

(*i*) an individual who transfers any house property to his or her spouse or minor child otherwise than for adequate consideration shall be deemed to be the owner of the house property so transferred;

(*ii*) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;

(*iii*) a member of a co-operative society to whom a building or part thereof built by the society is allotted or leased under a house building scheme of the society shall be deemed to be the owner of that building or part thereof;

(*iv*) "annual charge" means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government;

(*v*) "capital charge" means a charge to secure the discharge of a liability of a capital nature;

(*vi*) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

D.—Profits and gains of business or profession

Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(*i*) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year;

(*ii*) any compensation or other payment due to or received by,—

(*a*) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto;

(c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto;

(iii) income derived by a trade, professional or similar association from specific services performed for its members.

Explanation 1.—The profits and gains of a business shall include the profits and gains of managing agency.

Explanation 2.—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

Income from profits and gains of business or profession, how computed.

29. The income referred to in section 28 shall be computed in the manner specified in sections 30 to 43.

Rent, repairs and insurance for buildings.

30. In respect of rent, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—

(a) where the premises are occupied by the assessee—

(i) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

(ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;

(b) any sums paid on account of land revenue, local rates or municipal taxes;

(c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

Repairs and insurance of machinery, plant and furniture.

31. In respect of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

(i) the amount paid on account of current repairs thereto;

(ii) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.

Depreciation

32. (*1*) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed—

(*i*) in the case of ships other than ships ordinarily plying on inland waters, such percentage on the actual cost thereof to the assessee as may in any case or class of cases be prescribed;

(*ii*) in the case of buildings, machinery, plant or furniture, other than ships covered by clause (*i*), such percentage on the written down value thereof as may in any case or class of cases be prescribed;

(*iii*) in the case of any building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof:

Provided that such deficiency is actually written off in the books of the assessee.

Explanation.—For the purposes of this clause,—

(*1*) "moneys payable" in respect of any building, machinery, plant or furniture includes—

(*a*) any insurance, salvage or compensation moneys payable in respect thereof;

(*b*) where the building, machinery, plant or furniture is sold, the price for which it is sold;

(*2*) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force.

(*iv*) in the case of any building which has been newly erected after the 31st day of March, 1961, the building being used solely for the purpose of residence of persons employed in the business and drawing a remuneration not exceeding two hundred rupees per mensem, a sum equal to 20 per cent. of the actual cost of the building to the assessee in respect of the previous year of erection of the building; but any such sum shall not be deductible in determining the written down value.

(*2*) Where, in the assessment of the assessee, (or, if the assessee is a registered firm or an unregistered firm assessed as a registered firm, in the assessment of its partners) full effect cannot be given to

any allowance under clause (*i*) or clause (*ii*) of sub-section (*1*) in any previous year owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (*2*) of section 72 and sub-section (*3*) of section 73, the allowance or part of the allowance to which effect has not been given as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years.

Development rebate.

33. (*1*) In respect of a new ship acquired or new machinery or plant (other than office appliances or road transport vehicles) installed after the 31st day of March, 1954, which is owned by the assessee and is wholly used for the purposes of the business carried on by him, a sum by way of development rebate, equivalent to—

(*i*) in the case of a ship acquired after the 31st day of December, 1957, forty per cent. and in the case of a ship acquired before the 1st day of January, 1958, twenty-five per cent. of the actual cost of the ship to the assessee, and

(*ii*) in the case of machinery or plant installed before the 1st day of April, 1961, twenty-five per cent. and in the case of machinery or plant installed after the 31st day of March, 1961, twenty per cent. of the actual cost of the machinery or plant to the assessee,

shall, subject to the provisions of section 34, be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed.

(*2*) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed [the total income for this purpose being computed without making any allowance under sub-section (*1*)] is *nil* or is less than the full amount of the development rebate calculated at the rate applicable thereto under that sub-section,—

(*i*) the sum to be allowed by way of development rebate for that assessment year under sub-section (*1*) shall be only such amount as is sufficient to reduce the said total income to *nil*; and

(*ii*) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried

forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed.

Explanation.—Where for any assessment year development rebate is to be allowed in accordance with the provisions of sub-section (*2*) in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for this purpose being computed without making any allowance under sub-section (*1*)] is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely:—

(*i*) the allowance under clause (*ii*) of sub-section (*2*) shall be made before any allowance under clause (*i*) of that sub-section is made; and

(*ii*) where an allowance has to be made under clause (*ii*) of sub-section (*2*) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(*3*) Where in a scheme of amalgamation, a company (hereinafter in this sub-section referred to as the predecessor) sells or otherwise transfers to the company formed in pursuance of the predecessor's amalgamation with that company (hereinafter in this sub-section referred to as the successor) any ship, machinery or plant in respect of which development rebate has been allowed to the predecessor under sub-section (*1*),—

(*a*) the successor shall continue to fulfil the conditions mentioned in sub-section (*3*) of section 34 in respect of the reserve created by the predecessor and in respect of the period within which such ship, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (*5*) of section 155 shall apply to the successor as it would have applied to the predecessor had it committed the default;

(*b*) the balance of development rebate, if any, still outstanding to the predecessor in respect of such ship, machinery or plant shall be allowed to the successor in accordance with the provisions of sub-section (*2*), so, however, that the total period for which the balance of development rebate shall be carried forward in the assessments of the predecessor and the successor shall not exceed the period of eight years specified in sub-section (*2*) and the successor shall be treated as the assessee in respect of such ship, machinery or plant for the purposes of section 33 and section 34.

Explanation.—For the purposes of this sub-section, "amalgamation" means the merger of two companies (each of which is hereinafter in this Explanation referred to as the amalgamating company) to form one company (hereinafter in this Explanation referred to as the amalgamated company) in such a manner that—

(*i*) all the property of the amalgamating companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(*ii*) all the liabilities of the amalgamating companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation; and

(*iii*) all the shareholders of the amalgamating companies immediately before the amalgamation become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company;

(*4*) Where a firm is succeeded to by a private company, as defined in the Companies Act, 1956, in the business carried on by I of 1956. it as a result of which the firm sells or otherwise transfers to the private company any ship, machinery or plant, the provisions of clauses (*a*) and (*b*) of this sub-section shall, so far as may be apply to the firm and the company.

Explanation.—The provisions of this clause shall apply only where—

(*i*) all the property of the firm before the succession becomes the property of the company;

(*ii*) all the liabilities of the firm immediately before the succession become the liabilities of the company; and

(*iii*) all the partners of the firm immediately before the succession become shareholders of the company.

Conditions for depreciation allowance and development rebate.

34. (*1*) The deductions referred to in sub-section (*1*) of section 32 shall be allowed only if the prescribed particulars have been furnished; and the deduction referred to in section 33 shall be allowed only if the particulars prescribed for the purpose of clause (*i*) and clause (*ii*) of sub-section (*1*) of section 32 have been furnished by the assessee in respect of the ship or machinery or plant.

(*2*) For the purposes of section 32—

(*i*) the aggregate of all deductions in respect of depreciation made under sub-section (*1*) of section 32 or under the Indian Income-tax Act, 1922 or under any Act repealed by that Act or under the Indian Income-tax Act, 1886, shall, in no case, exceed the actual cost to the assessee of the buildings, machinery, plant or furniture, as the case may be;

11 of 1922.
2 of 1886.

(*ii*) nothing in clause (*i*) or clause (*ii*) of sub-section (*1*) of section 32 shall be deemed to authorise the allowance for any previous year of any sum in respect of any building, machinery, plant or furniture sold, discarded, demolished or destroyed, in that year.

(*3*) (*a*) The deduction referred to in section 33 shall not be allowed unless an amount equal to seventy-five per cent. of the development rebate to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of ten years next following for the purposes of the business of the undertaking, other than—

(*i*) for distribution by way of dividends or profits; or

(*ii*) for remittance outside India as profits or for the creation of any asset outside India:

Provided that this clause shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948 or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958.

54 of 1948.

(*b*) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under section 33 in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5) of section 155 shall apply accordingly:

Provided that this clause shall not apply where the ship, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 or where the sale or transfer of the ship, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (*3*) of section 33.

1 of 1956.

Expenditure on scientific research.

35. (*1*) In respect of expenditure on scientific research, the following deductions shall be allowed—

(*i*) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business;

(*ii*) any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research:

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority;

(*iii*) any sum paid to a university, college or other institution to be used for research in social science or statistical research related to the class of business carried on, being a university, college or institution which is for the time being approved for the purposes of this clause by the prescribed authority;

(*iv*) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (*2*).

(*2*) For the purposes of clause (*iv*) of sub-section (*1*),—

(*i*) one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous years.

Explanation.—Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall

be deemed to have been incurred in the previous year in which the business is commenced;

(*ii*) notwithstanding anything contained in clause (*i*), where an asset representing expenditure of a capital nature ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deductions already allowed under clause (*i*) falls short of the said expenditure, then—

(*a*) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and

(*b*) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year;

(*iii*) if the asset mentioned in clause (*ii*) is sold, without having been used for other purposes, in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place;

(*iv*) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed under clauses (*i*), (*ii*) and (*iii*) of sub-section (*1*) of section 32 for the same previous year in respect of that asset;

(*v*) where the asset is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under clauses (*i*), (*ii*) and (*iii*) of sub-section (*1*) of section 32.

(*3*) If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question to the prescribed authority, whose decision shall be final.

(*4*) The provisions of sub-section (*2*) of section 32 shall apply in relation to deductions allowable under clause (*iv*) of sub-section (*1*) as they apply in relation to deductions allowable in respect of depreciation.

Other deductions.

36. (*1*) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

(*i*) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;

(*ii*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission:

Provided that the amount of the bonus or commission is reasonable with reference to—

(*a*) the pay of the employee and the conditions of his service;

(*b*) the profits of the business or profession for the previous year in question; and

(*c*) the general practice in similar business or profession;

(*iii*) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

(*iv*) any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be; and subject to such conditions as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head 'Salaries' or to the contributions or to the number of members of the fund;

(*v*) any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;

(*vi*) in respect of animals which have been used for the purposes of the business or profession otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the actual cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

(*vii*) subject to the provisions of sub-section (*2*), debt, or part thereof, which is established to have become a bad debt in the previous year;

(*viii*) in respect of any special reserve created by a financial corporation which is engaged in providing long-term finance for industrial development in India, an amount not exceeding ten per cent. of the total income carried to such reserve account:

Provided that the corporation is for the time being approved by the Central Government for the purposes of this clause:

Provided further that where the aggregate of the amounts carried to such reserve account from time to time exceeds the paid-up share capital (excluding the amounts capitalised from reserves) of the corporation, no allowance under this clause shall be made in respect of such excess.

(*2*) In making any deduction for a bad debt or part thereof for which provision is made in clause (*vii*) of sub-section (*1*), the following rules shall apply:—

(*i*) no such deduction shall be allowed unless such debt or part thereof—

(*a*) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and

(*b*) has been written off as irrecoverable in the accounts of the assessee for that previous year;

(*ii*) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;

(*iii*) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year, but the Income-tax Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;

(*iv*) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year and the Income-tax Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (*6*) of section 155 shall apply.

General.

37. (*1*) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly, necessarily and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(*2*) Notwithstanding anything contained in sub-section (*1*), any expenditure which is in the nature of entertainment expenditure shall not be allowed except in the case of a company, and in the case of a company any such expenditure shall be subject to the following restrictions, that is to say, no such expenditure shall be allowed which exceeds the aggregate amount computed as hereunder:—

(*i*) on the first Rs. 10,00,000 of the profits and gains of the business (computed before making any allowance under section 33 or in respect of entertainment expenditure)	at the rate of 1% or Rs. 5,000, whichever is higher;
(*ii*) on the next Rs. 40,00,000 of the profits and gains of the business (computed in the manner aforesaid) . . .	at the rate of ½%;
(*iii*) on the next Rs. 1,20,00,000 of the profits and gains of the business (computed in the manner aforesaid) .	at the rate of ¼%,
(*iv*) on the balance of the profits and gains of the business (computed in the manner aforesaid)	nil.

Building etc. partly used for business, etc., or not exclusively so used.

38. (*1*) Where a part of any premises is used as dwelling house by the assessee,—

(*a*) the deduction under sub-clause (*i*) of clause (*a*) of section 30, in the case of rent, shall be such amount as the

Income-tax Officer may determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum paid for repairs, such sum as is proportionate to the part of the premises used for the purpose of the business or profession;

(b) the deduction under clause (b) of section 30 shall be such sum as the Income-tax Officer may determine having regard to the part so used.

(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under sub-clause (ii) of clause (a) and clause (c) of section 30, clauses (i) and (ii) of section 31 and clauses (i), (ii) and (iii) of sub-section (1) of section 32 shall be restricted to a fair proportionate part thereof which the Income-tax Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

Managing agency commission.

39. Where a managing agent of a company is liable under an agreement in writing made for adequate consideration to share managing agency commission with a third party or third parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them under the agreement, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration, such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

Amounts not deductible.

40. Notwithstanding anything to the contrary in sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",

(a) in the case of any assessee—

(i) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163;

(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains;

(*iii*) any payment which is chargeable under the head "Salaries", if it is payable outside India and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;

(*iv*) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries";

(*b*) in the case of any firm, association of persons or body of individuals or any Hindu undivided family, any payment of interest, salary, bonus, commission or remuneration made by the firm to any partner of the firm, by the association to any member of the association, by the body to any individual member of the body, or by the Hindu undivided family to any member of the family:

Provided that any interest paid to any member of the Hindu undivided family on his self-acquired and separate funds lent to the family shall not be disallowed under this clause;

(*c*) in the case of any company—

(*i*) any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or to a person who has a substantial interest in the company or to a relative of the director or of such person as the case may be,

(*ii*) any expenditure or allowance in respect of any assets of the company used by any person referred to in sub-clause (*i*) either wholly or partly for his own purposes or benefit,

if in the opinion of the Income-tax Officer any such expenditure or allowance as is mentioned in sub-clauses (*i*) and (*ii*) is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing to it therefrom;

Explanation.—The provisions of this clause shall apply notwithstanding that any amount not to be allowed under this clause is included in the total income of any person referred to in sub-clause (*i*);

(*d*) in the case of a banking company, the amounts which have been allowed as a deduction in computing its income chargeable to income-tax under the head "Interest on securities" under the provisions of sub-section (*1*) of section 20.

Profits chargeable to tax.

41. (*1*) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession is continued in that year or not.

(*2*) Where any building, machinery, plant or furniture which is owned by the assessee and which was or has been used for the purposes of business or profession is sold, discarded, demolished or destroyed in the previous year, and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place or the money payable was determined, as the case may be:

Provided that where the building sold, discarded, demolished or destroyed is a building to which Explanation 5 to section 43 applies, and the moneys payable in respect of such building, together with the amount of scrap value, if any, exceeds the actual cost as determined under that Explanation, so much of the excess as does not exceed the difference between the actual cost so determined and the written down value shall be chargeable to income-tax as income of the business or profession of such previous year.

Explanation.—The provisions of this sub-section shall apply notwithstanding that the business or profession for the purposes of which the building, machinery, plant or furniture was being used is no longer in existence at the time when the building, machinery, plant or furniture is sold, discarded, demolished or destroyed.

(*3*) Where an asset representing expenditure of a capital nature on scientific research within the meaning of clause (*iv*) of sub-section (*1*) of section 35, read with clause (*4*) of section 43, is sold, whether during the continuance of the business or after the cessation thereof, without having been used for other purposes, and the proceeds of the sale together with the total amount of the deductions made under clause (*i*) of sub-section (*2*) of section 35 exceed the amount of the capital expenditure, the excess or the amount of

the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place.

(*4*) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (*vii*) of sub-section (*1*) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be chargeable to income-tax as income of the business or profession of the previous year in which it is recovered.

Explanation.—The expression "moneys payable" in sub-section (*2*) and the expression "sold" in sub-sections (*2*) and (*3*) shall have the same meanings as in sub-section (*1*) of section 32.

Special provision for deductions in the case of business for prospecting, etc., for mineral oil.

42. For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for the association or participation in such business of the Central Government (which agreement has been laid on the Table of each House of Parliament), there shall be made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation—

(*a*) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee;

(*b*) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section 32; and

(*c*) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement;

and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

Definitions of certain terms relevant to income from profits and gains of business or profession.

43. In sections 28 to 41 and in this section, unless the context otherwise requires—

(1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under clause (*i*), clause (*ii*) or clause (*iii*) of sub-section (*1*) of section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (*iv*) of sub-section (*1*) of section 35 or under any corresponding provision of the Indian Income-tax Act, 1922.

11 of 1922.

Explanation 2.—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the written down value thereof as in the case of the previous owner for the previous year in which the asset is so acquired or the market value thereof on the date of such acquisition, whichever is the less.

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the Income-tax Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances of the case.

Explanation 4.—Where assets which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, are re-acquired by him, the actual cost to the assessee shall be the actual cost to him when he first acquired the assets less the aggregate of the depreciation actually allowed to him under this Act and any allowance made under clause (*iii*) of sub-section (*1*) of section 32 of this Act or under the corresponding provisions relating to depreciation and other allowances of the Indian Income-tax Act, 1922, or under any executive orders issued when the Indian Income-tax Act, 1886 was in force, or the actual price for which the asset is re-acquired by him, whichever is the less.

11 of 1922.
2 of 1886.

Explanation 5.—Where a building previously the property of the assessee is brought into use for the purpose of the business or profession after the 28th day of February 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee.

Explanation 6.—When any capital asset is transferred by a company to its subsidiary company, then, if the conditions of clause (*iv*) of section 47 are satisfied, the actual cost of the transferred capital asset to the subsidiary company shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business;

(2) "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "Profits and gains of business or profession";

(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession;

(4) (*i*) "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge;

(*ii*) references to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research;

(*iii*) references to scientific research related to a business or class of business include—

(*a*) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(*b*) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;

(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;

shall not be deemed to be a speculative transaction;

(6) "written down value" means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 was in force.

11 of 1922.
2 of 1886.

Explanation 1.—When in a case of succession in business or profession, an assessment is made on the successor under sub-section (2) of section 170 the written down value of any asset shall be the amount which would have been taken as its written down value if the assessment had been made directly on the person succeeded to.

Explanation 2.—When any capital asset is transferred by a company to its subsidiary company, then, if the conditions of clause (iv) of section 47 are satisfied, the written down value of the transferred capital asset to the subsidiary company shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

Explanation 3.—Any allowance in respect of any depreciation carried forward under sub-section (2) of section 32 shall be deemed to be depreciation "actually allowed".

Insurance business.

44. Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to 43, the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.

E.—Capital gains

Capital gains.

45. Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53 and 54, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

Capital gains on distribution of capital assets by companies in liquidation.

46. Notwithstanding anything contained in section 45, where there is a transfer by way of distribution of the capital assets of a company on its liquidation, the company shall not be chargeable to income-tax under the head "Capital gains" in respect of such distribution, but the shareholder who has received any portion of the capital assets shall be chargeable to income-tax under the head "Capital gains" in respect of the market value on the date of distribution of such portion as is in excess of the aggregate of the following amounts, namely:—

(*i*) the cost of acquisition of the shares to him; and

(*ii*) any sum forming part of the value of the capital assets so distributed as is assessable as dividend within the meaning of sub-clause (*c*) of clause (*22*) of section 2.

Transactions not regarded as transfer.

47. (*1*) Nothing contained in section 45 shall apply to the following transfers:—

(*i*) any distribution of capital assets on the total or partial partition of a Hindu undivided family;

(*ii*) any distribution of capital assets on the dissolution of a firm;

(*iii*) any transfer of a capital asset under a gift or will or on irrevocable trust;

(*iv*) any transfer of a capital asset by a company to its subsidiary company, if—

(*a*) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and

(*b*) the subsidiary company is an Indian company and is a resident.

Mode of computation and deductions.

48. The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:—

(*i*) expenditure incurred wholly, necessarily and exclusively in connection with such transfer;

(*ii*) the cost of acquisition of the capital asset to the assessee and the cost of any improvement of the asset incurred or borne by the assessee.

Cost with reference to certain modes of acquisition.

49. Where the capital asset became the property of the assessee—

(*i*) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(*ii*) under a gift or will;

(*iii*) (*a*) by succession, inheritance or devolution, or

(*b*) on any distribution of assets on the dissolution of a firm, body of individuals or other association of persons, or

(*c*) on any distribution of assets on the liquidation of a company, or

(*d*) under a transfer to a revocable or irrevocable trust,

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Special provision for computing cost of acquisition in the case of depreciable assets.

50. Where the capital asset is an asset in respect of which a deduction on account of depreciation has been obtained by the assessee in any previous year either under this Act or under the Indian Income-tax Act, 1922, or any Act repealed by that Act, or under executive orders issued when the Indian Income-tax Act, 1886, was in force, the provisions of sections 48 and 49 shall be subject to the following modifications:—

11 of 1922.
2 of 1886.

(*1*) The written down value, as defined in clause (*6*) of section 43 of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.

(*2*) Where under any provision of section 49, read with sub-section (2) of section 55, the fair market value of the asset on the 1st day of January, 1954, is to be taken into account at the option of the assessee, then, the cost of acquisition of the asset shall, at the option of the assessee, be the fair market value of the asset

on the said date, as reduced by the amount of depreciation, if any, allowed to the assessee after the said date, and as adjusted.

Advance money received.

51. Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

Consideration for transfer in cases of under-statement.

52. Where the person who acquires a capital asset from an assessee is directly or indirectly connected with the assessee and the Income-tax Officer has reason to believe that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under section 45, the full value of the consideration for the transfer shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date of the transfer.

Capital gains exempt from tax.

53. Notwithstanding anything contained in section 45, where a capital gain arises from the transfer of one or more capital assets, being buildings or lands appurtenant thereto, the income of which is chargeable under the head "Income from house property", and the full aggregate value of the consideration for which the transfer is made does not exceed twenty-five thousand rupees, the capital gain shall not be included in the total income of the assessee:

Provided that this section shall not apply in any case where the aggregate of the fair market values of all capital assets, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property" owned by the assessee immediately before the transfer aforesaid is made, exceeds the sum of rupees fifty thousand.

Profit on sale of property used for residences.

54. Where a capital gain arises from the transfer of a capital asset to which the provisions of section 53 are not applicable, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new property for the purposes of his own residence, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall, if the assessee so elects in writing before the assessment is made, be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost of the new asset, the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as income of the previous year; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45.

Meaning of "adjusted" "cost of improvements" and "cost of acquisition".

55. (*1*) For the purposes of sections 48, 49 and 50,—

(*a*) "adjusted", in relation to written down value or fair market value, means diminished by any loss deducted or increased by any profit assessed, under the provisions of clause (*iii*) of sub-section (*1*) of section 32 or sub-section (*2*) of section 41, as the case may be;

(*b*) "cost of any improvements", in relation to a capital asset,—

(*i*) where the capital asset became the property of the previous owner or the assessee before the 1st day of January, 1954, and the fair market value of the asset on that day is taken as the cost of acquisition at the option of the assessee, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(*ii*) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property or by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvements" shall be construed accordingly.

(2) For the purposes of sections 48 and 49, "cost of acquisition", in relation to a capital asset,—

(i) where the capital asset became the property of the assessee before the 1st day of January, 1954, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee;

(ii) where the capital asset became the property of the assessee by any of the modes specified in section 49, and the capital asset became the property of the previous owner before the 1st day of January, 1954, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee;

(iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution.

(3) Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

F.—Income from other sources

Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other sources", namely:—

(*i*) dividends;

(*ii*) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(*iii*) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession".

Deductions.

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:—

(*i*) in the case of dividends, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend on behalf of the assessee;

(*ii*) in the case of income of the nature referred to in clauses (*ii*) and (*iii*) of sub-section (*2*) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (*ii*) of clause (*a*) and clause (*c*) of section 30, section 31, and sub-section (*1*) of section 32 and subject to the provisions of sections 34 and 38;

(*iii*) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly, necessarily and exclusively for the purpose of making or earning such income.

Amounts not deductible.

58. Notwithstanding anything to the contrary contained in section 57, the following amounts shall not be deductible in computing the income chargeable under the head "Income from other sources", namely:—

(a) in the case of any assessee—

(i) any personal expenses of the assessee;

(ii) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163;

(iii) any payment which is chargeable under the head "Salaries", if it is payable outside India, unless tax has been paid thereon or deducted therefrom under Chapter XVII-B;

(b) in the case of a company, any expenditure or allowance of the nature referred to in clause (c) of section 40, notwithstanding that the amount thereof is included in the total income of any person referred to in sub-clause (i) of clause (c) of section 40.

Profits chargeable to tax.

59. (1) The provisions of sub-section (1) of section 41 shall apply, so far as may be, in computing the income of an assessee under section 56, as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

(2) When any buildings, machinery, plant or furniture to which clauses (ii) and (iii) of sub-section (2) of section 56 apply are sold, discarded, demolished or destroyed, the provisions of sub-section (2) of section 41 shall apply, so far as may be, in computing the income of an assessee under section 56 as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

Explanation.—For the purpose of this section, the expression "sold" shall have the same meaning as in sub-section (1) of section 32.

CHAPTER V

INCOME OF OTHER PERSONS, INCLUDED IN ASSESSEE'S TOTAL INCOME

Transfer of income where there is no transfer of assets.

60. All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Revocable transfer of assets.

61. All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Transfer irrevocable for a specified period.

62. (*1*) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer—

(*i*) by way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee; or

(*ii*) made before the first day of April, 1961 which is not revocable for a period exceeding six years:

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(*2*) Notwithstanding anything contained in sub-section (*1*), all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

"Transfer" and "revocable transfer" defined.

63. For the purposes of sections 60, 61 and 62 and of this section,—

(*a*) a transfer shall be deemed to be revocable if—

(*i*) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(*ii*) it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets;

(*b*) "transfer" includes any settlement, trust, covenant, agreement or arrangement.

Income of individual to include income of spouse, minor child, etc.

64. In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

(*i*) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;

(*ii*) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner;

(*iii*) subject to the provisions of section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;

(*iv*) to a minor child, not being a married daughter of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration; and

(*v*) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual for the immediate or deferred benefit of his or her spouse or a minor child (not being a married daughter) or both.

Liability of person in respect of income included in the income of another person.

65. Where, by reason of the provisions contained in this Chapter, the income from any asset or from membership in a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of a notice of demand by the Income-tax Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included, and the provisions of Chapter XVII-D shall, so far as may be, apply accordingly:

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

Aggregation of Income

66. In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VII and any amount in respect of which the assessee is entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year in accordance with, and to the extent provided in sections 87 and 88. Total income.

67. (*1*) In computing the total income of an assessee who is a partner of a firm, whether the net result of the computation of total income of the firm is a profit or a loss, his share (whether a net profit or a net loss) shall be computed as follows:— Method of computing a partner's share in the income of the firm.

(*a*) any interest, salary, commission or other remuneration paid to any partner in respect of the previous year shall be deducted from the total income of the firm, and the balance ascertained and apportioned among the partners;

(*b*) where the amount apportioned to the partner under clause (*a*) in a profit, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be added to that amount, and the result shall be treated as the partner's share in the income of the firm;

(*c*) where the amount apportioned to the partner under clause (*a*) in a profit, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the partner's share in the income of the firm.

(*2*) The share of a partner in the income or loss of the firm, as computed under sub-section (*1*) shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the firm has been determined under each head of income.

(*3*) Any interest paid by a partner on capital borrowed by him for the purposes of investment in the firm shall, in computing his

income chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the firm, be deducted from the share, but no other deduction shall be allowed in respect of the said share.

(4) If the share of a partner in the income of a registered firm or a firm treated as registered in accordance with the provisions of clause (*b*) of section 183, as computed under this section, is a loss, such loss may be set off, or carried forward and set off, in accordance with the provisions of this Chapter.

Explanation.—In this section, "paid" has the same meaning as is assigned to it in clause (*2*) of section 43.

Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Income-tax Officer satisfactory, the sum so credited shall be deemed to be the income of the assessee and shall be chargeable to income-tax as the income of that previous year.

Unexplained Investments.

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the value of the investments shall be deemed to be the income of the assessee of such financial year.

Set off, or carry forward and set off

Set off of loss from one source against loss from another source under the same head of income.

70. Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

Set off of loss from one head against another.

71. Where in respect of any assessment year the net result of the computation under any of the heads of income mentioned in section 14 other than "Capital gains" is a loss to the assessee, the assessee shall, subject to the other provisions of this Chapter, be entitled to have the amount of such loss set off against his income assessable for that assessment year under any other head:

Provided that, where the total income includes any income assessable under the head "Capital gains", the loss computed under any other head of income, if the assessee so desires, shall not be set off against the income under the head "Capital gains" but shall be set off against his income assessable under any other head of income.

72. (*1*) Where for any assessment year the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss has not been wholly set off in accordance with the provisions of section 71, so much of the loss as is not so set off or the whole loss, where the assessee had no income under any other head, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and— **Carry forward and set off of business losses.**

(*i*) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year:

Provided that the business or profession for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment year;

and

(*ii*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(*2*) Where any allowance or part thereof is, under sub-section (*2*) of section 32 or sub-section (*4*) of section 35, to be carried forward, effect shall first be given to the provisions of this section.

(*3*) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

73. (*1*) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business. **Losses in speculation business.**

(*2*) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (*1*), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

(4) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

Losses under the head "Capital gains".

74. (1) Where in respect of any assessment year the net result of the computation under the head "Capital gains" is a loss to the assessee, such loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and set off against capital gains assessable for that assessment year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following assessment year and so on:

Provided that where the loss computed in respect of any assessee, not being a company, for any assessment year does not exceed five thousand rupees, it shall not be carried forward under this sub-section.

(2) No loss shall be carried forward under sub-section (1) for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

Losses of registered firms.

75. (1) Where the assessee is a registered firm, any loss which cannot be set off against any other income of the firm shall be apportioned between the partners of the firm, and they alone shall be entitled to have the amount of the loss set off and carried forward for set off under sections 71, 72, 73 and 74.

(2) Nothing contained in sub-section (1) of section 72, sub-section (2) of section 73 or sub-section (1) of section 74 shall entitle any assessee, being a registered firm, to have its loss carried forward and set off under the provisions of the aforesaid sections.

Losses of unregistered firms assessed as registered firms.

76. In the case of an unregistered firm assessed under the provisions of clause (b) of section 183 in respect of any assessment year, its losses for that assessment year shall be dealt with as if it were a registered firm.

Losses of unregistered firms or their partners.

77. (*1*) Where the assessce is an unregistered firm which has not been assessed as a registered firm under the provisions of clause (*b*) of section 183, any loss of the firm shall be set off or carried forward and set off only against the income of the firm.

(*2*) Where the assessee is a partner of an unregistered firm or a firm which has not been assessed as a registered firm under the provisions of clause (*b*) of section 183 and his share in the income of the firm is a loss, then, whether the firm has already been assessed or not—

(*a*) such loss shall not be set off under the provisions of section 71, sub-section (*1*) of section 73 or sub-section (*1*) of section 74;

(*b*) nothing contained in sub-section (*1*) of section 72 or sub-section (*2*) of section 73 or sub-section (*1*) of section 74 shall entitle the assessee to have such loss carried forward and set off against his own income.

Carry forward and set off of losses in case of change in constitution of firm or succession.

78. (*1*) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with section 67 as exceeds his share of profits, if any, of the previous year in the firm, or entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under section 67.

(*2*) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.

Carry forward and set off of losses in case of certain companies.

79. Notwithstanding anything contained in this Chapter, no loss incurred in any year prior to the previous year in the case of a company, not being a company in which the public are substantially interested, shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year or years in which the loss was incurred.

Submission of return for losses.

80. Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed under section 139, shall be carried forward and set off under sub-section (*1*) of section 72 or sub-section (*2*) of section 73 or sub-section (*1*) of section 74

CHAPTER VII

INCOMES FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX IS PAYABLE

Income of co-operative societies.

81. Income-tax shall not be payable by a co-operative society—

(*i*) in respect of the profits and gains of business carried on by it, if it is—

(*a*) a society engaged in carrying on the business of banking or providing credit facilities to its members; or

(*b*) a society engaged in a cottage industry; or

(*c*) a society engaged in the marketing of the agricultural produce of its members; or

(*d*) a society engaged in the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or

(*e*) a society engaged in the processing without the aid of power of the agricultural produce of its members; or

(*f*) a primary society engaged in supplying milk raised by its members to a federal milk co-operative society:

Provided that, in the case of a co-operative society which is also engaged in activities other than those mentioned in this clause, nothing contained herein shall apply to that part of its profits and gains as is attributable to such activities and as exceeds fifteen thousand rupees;

(*ii*) in respect of so much of the profits and gains of business carried on by it as does not exceed fifteen thousand rupees, if it is a co-operative society other than a co-operative society referred to in clause (*i*);

(*iii*) in respect of any interest and dividends derived from its investments with any other co-operative society;

(*iv*) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;

(*v*) in respect of any interest on securities chargeable under section 18 or any income from property chargeable under section 22, where the total income of the co-operative society does not exceed twenty thousand rupees and the society is not a housing society or an urban consumer's society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power:

Provided that nothing contained in this section shall apply to a co-operative society carrying on insurance business in respect of the profits and gains of that business computed in accordance with section 44.

Explanation.—For the purposes of this section, "an urban consumer's co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

Dividends from co-operative society.

82. Income-tax shall not be payable by an assessee, who is a member of a co-operative society in respect of any dividends received by him from the society.

Income of marketing society.

83. Income-tax shall not be payable by an assessee, which is an authority constituted under any law for the time being in force for the marketing of commodities, in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

Income of newly established industrial undertakings or hotels.

84. (*1*) Save as otherwise hereinafter provided, income-tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking or hotel to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking or hotel, computed in the prescribed manner.

(*2*) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—

(*i*) it is not formed by the splitting up or the reconstruction of a business already in existence;

(*ii*) it is not formed by the transfer to a new business of a building, machinery or plant previously used for any purpose;

(*iii*) it has begun or begins to manufacture or produce articles in any part of India at any time within a period of eighteen years from the 1st day of April, 1948, or such further period as the

Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(*iv*) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(*3*) This section applies to any hotel which—

(*a*) starts functioning on or after the first day of April, 1961, and is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business of building, machinery or plant previously used in any other business;

(*b*) is owned and run by a company registered in India with a paid-up capital of not less than five hundred thousand rupees;

(*c*) is run in premises which are owned by the company;

(*d*) has such number and types of guest rooms and provides such amenities as may be prescribed, having regard to the population and the tourist importance of the place in which the hotel is located; and

(*e*) is for the time being approved for the purposes of this sub-section by the Central Government.

(*4*) If the Central Government is satisfied that, having regard to the circumstances relating to an industrial undertaking, it is no longer necessary in the public interest to continue the exemption conferred by this section, it may, by notification in the Official Gazette, direct that the exemption conferred by this section shall cease to apply to that industrial undertaking.

(*5*) The profits or gains of an industrial undertaking or hotel to which this section applies shall be computed in accordance with the provisions contained in Chapter IV-D.

(*6*) Nothing in this section shall affect the application of the provisions contained in Chapter XI-D in relation to the profits or gains of an industrial undertaking or hotel to which this section applies.

(*7*) The provisions of this section shall, in relation to an industrial undertaking, apply to the assessment—

(*i*) for the assessment year relevant to the previous year in which an undertaking begins to manufacture or produce articles, and

(*ii*) where the assessee is a co-operative society, for the six assessment years immediately succeeding, and where the assessee is any other person, for the four assessment years immediately succeeding.

(8) The provisions of this section shall, in relation to a hotel, apply to the assessment for the financial year next following the previous year in which the hotel starts functioning and for the four assessments immediately succeeding.

Dividend from new industrial undertaking or hotel.

85. Subject to any rules that may be made by the Board in this behalf, income-tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking or a hotel to which section 84 applies as is attributable to that part of the profits or gains on which income-tax is not payable under section 84.

Other incomes.

86. Income-tax shall not be payable by an assessee in respect of the following—

(*i*) the interest due on any security of the Central Government issued or declared to be income-tax free;

(*ii*) the interest due on any security of a State Government issued income-tax free, the income-tax whereon is payable by the State Government;

(*iii*) if the assessee is a partner of an unregistered firm, any portion of the assessee's share in the profits and gains of the firm computed in the manner laid down in section 67 on which income-tax has already been paid by the firm;

(*iv*) if the assessee is a partner of a registered firm, the amount which represents the difference between—

(*a*) the assessee's share in the total income of the firm, and

(*b*) his share in such total income as reduced by the income-tax, if any, payable by the firm,

the shares in either case being computed in the manner laid down in section 67; and

(*v*) if the assessee is a member of an association of persons, or a body of individuals other than a Hindu undivided family, a company or a firm, any portion of the amount which he is entitled to receive from the association or body on which income-tax has already been paid by the association or body.

CHAPTER VIII

REBATES AND RELIEFS

A.—Rebate of income-tax

Rebate on life insurance premia, annuities and contributions to provident fund, etc

87. (*1*) Subject to the provisions of this section, the assessee shall be entitled to a deduction, from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on the following sums, namely:—

(*a*) where the assessee is an individual, any sums paid in the previous year by the assessee out of his total income—

(*i*) to effect or to keep in force an insurance on the life of the assessee or on the life of the wife or husband of the assessee; or

(*ii*) to effect or to keep in force a contract for a deferred annuity on the life of the assessee or on the life of the wife or husband of the assessee; or

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(*iii*) as a contribution to any provident fund to which the Provident Funds Act, 1925, applies;

(*b*) where the assessee is a Hindu undivided family, any sums paid in the previous year by the assessee out of its total income to effect or to keep in force an insurance on the life of any male member of the family or of the wife of any such member;

(*c*) any sum deducted in the previous year from the salary payable by or on behalf of the Government to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his wife or children, in so far as the sum so deducted does not exceed one-fifth of the salary;

(*d*) if the assessee is an employee participating in a recognised provident fund, his own contributions to his individual account in the fund in the previous year, to the extent provided in rule 7 of Part A of the Fourth Schedule;

(*e*) if the assessee is an employee participating in an approved superannuation fund, any sum paid in the previous year by him by way of contribution towards the superannuation fund.

(2) The provisions of clauses (*a*) and (*b*) of sub-section (*1*) shall apply only to so much of any premium or other payment made on a policy other than a contract of deferred annuity as is not in excess of ten per cent. of the actual capital sum assured.

Explanation.—In calculating any such capital sum, no account shall be taken—

(*i*) of the value of any premiums agreed to be returned, or

(*ii*) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

(3) The aggregate of the sums in respect of which a deduction of income-tax is allowed under sub-section (*1*), shall not exceed, in the case of an individual, one-fourth of his total income or eight thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-fourth of its total income or sixteen thousand rupees, whichever is less.

Donations for charitable purposes.

88. (*1*) Subject to the provisions of this section, the assessee shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year of an amount equal to the income-tax calculated at the average rate of income-tax on any sums paid by him in the previous year as donations to any institution or fund to which this section applies or in respect of any sums paid by him on or after the 1st day of April, 1960, as donations to Government or to any local authority to be utilised for any charitable purpose.

(2) No deduction shall be made under sub-section (*1*) if the aggregate of the sums paid as aforesaid by the assessee is less than two hundred and fifty rupees.

(3) No deduction shall be made under sub-section (*1*) in respect of any sums paid in excess of seven and a half per cent. of the assessee's total income as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which a deduction of income-tax has been granted under any other provision of this Chapter, or one hundred and fifty thousand rupees, whichever is less.

(4) The amount of income-tax deductible under this section, together with the amount of super-tax deductible under section 100 shall not in any case exceed half the aggregate of the donations in respect of which the deduction is allowed under this section.

(5) This section applies only to donations to an institution or fund established in India for a charitable purpose which fulfils the following conditions, namely:—

(i) if the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (22) of section 10;

(ii) the instrument under which the institution or fund is constituted does not or the rules governing the institution or the fund do not contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community;

(iv) the institution or fund maintains regular accounts of its receipt and expenditure; and

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860, or under any law corresponding to that Act in force in any part of India or under section 26 of the Companies Act, 1956, or is a university established by law, or is any other educational institution recognised by the Government or by a university established by law, or affiliated to any university established by law or is an institution financed wholly or in part by the Government or a local authority.

21 of 1860.
1 of 1956.

Explanation.—An institution or fund established for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community within the meaning of clause (iii) of this sub-section.

B.—Relief for income-tax

Relief when salary, etc. is paid in arrears or in advance.

89. (1) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of sub-clause (i), sub-clause (ii) or sub-clause (iii) of clause (3) of section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate.

(2) Where, by reason of any portion of income from interest or securities being received in arrears, an assessee's total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate.

CHAPTER IX

DOUBLE TAXATION RELIEF

Agreement with foreign countries.

90. The Central Government may enter into an agreement—

(a) with the Government of any country outside India for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and income-tax in that country, or

(b) with the Government of any country outside India for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country;

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

Countries with which no agreement exists.

91. (1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrued or arose to him during that previous year in Pakistan he has paid in that country. by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him—

(a) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(b) of a sum calculated on that income at the Indian rate of tax;

whichever is less.

(3) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the same share of income, he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed share of income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Explanation.—In this section,—

(*i*) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(*ii*) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this section, by the total income;

(*iii*) expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country.

(*iv*) the expression "income-tax" in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Income from transactions with non-residents, how computed in certain cases.

92. Where a business is carried on between a resident and a non-resident and it appears to the Income-tax Officer that, owing to the close connection between them, the course of business is so arranged that the business transacted between them produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer shall determine the amount of profits which may reasonably be deemed to have been derived therefrom and include such amount in the total income of the resident.

Avoidance of income-tax by transactions resulting in transfer of income to non-residents.

93. (*1*) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income becomes payable to a non-resident, the following provisions shall apply—

(*a*) where any person has, by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person, would be chargeable to income-tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act;

(*b*) where, whether before or after any such transfer, any such first mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first mentioned person for all the purposes of this Act.

Explanation.—The provisions of this sub-section shall apply also in relation to transfers of assets and associated operations carried out before the commencement of this Act.

(*2*) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

(*3*) The provisions of this section shall not apply if the first mentioned person in sub-section (*1*) shows to the satisfaction of the Income-tax Officer that—

(*a*) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(*b*) the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

Explanation.—For the purposes of this section,—

(*a*) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(*b*) any body corporate incorporated outside India shall be treated as if it were a non-resident;

(*c*) a person shall be deemed to have power to enjoy the income of a non-resident if—

(*i*) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person in sub-section (*1*), or

(*ii*) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(*iii*) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income, or

(*iv*) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*v*) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;

(*d*) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) (*a*) "assets" includes property or rights of any kind and "transfer" in relation to rights includes the creation of those rights;

(*b*) "associated operation", in relation to any transfer, means an operation of any kind effected by any person in relation to—

(*i*) any of the assets transferred, or

(*ii*) any assets representing, whether directly or indirectly, any of the assets transferred, or

(*iii*) the income arising from any such assets, or

(*iv*) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets;

(*c*) "benefit" includes a payment of any kind;

(*d*) "capital sum" means—

(*i*) any sum paid or payable by way of a loan or repayment of a loan; and

(*ii*) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

Avoidance of tax by certain transactions in securities.

94. (*1*) Where the owner of any securities (in this sub-section and in sub-section (*2*) referred to as "the owner") sells or transfers those securities, and buys back or re-acquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed, for all the purposes of this Act, to be income of the owner and not to be the income of any other person.

Explanation.—The references in this sub-section to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securities had been bought back or re-acquired.

(*2*) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(*3*) The provisions of sub-section (*1*) or sub-section (*2*) shall not apply if the owner, or the person who has had a beneficial interest

in the securities, as the case may be, proves to the satisfaction of the Income-tax Officer—

(a) that there has been no avoidance of income-tax, or

(b) that the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on a business which consists wholly or partly in dealing in securities buys or acquires any securities and sells back or re-transfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(5) Sub-section (4) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(6) The Income-tax Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

Explanation.—For the purposes of this section,—

(a) "interest" includes a dividend;

(b) "securities" includes stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred.

CHAPTER XI

SUPER-TAX

A.—General

Charge of super-tax.

95. (*1*) In addition to the income-tax charged for any assessment year, and save as otherwise provided in this Act, there shall be charged for that assessment year in respect of the total income of the previous year or previous years, as the case may be, of every person, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that assessment year by any Central Act:

Provided that, where by virtue of any provision of this Act super-tax is to be charged in respect of the income of a period other than the previous year, super-tax shall be charged accordingly.

(*2*) In respect of income chargeable under sub-section (*1*), super-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

(*3*) In the case of a registered firm, or an unregistered firm which has been assessed in the manner applicable to a registered firm under the provisions of clause (*b*) of section 183, super-tax shall be payable by each partner of the firm individually on his share in the income of the firm and not by the firm itself.

Total income for super-tax.

96. Subject to the provisions of this Chapter, the total income of any person shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any assessment year, the assessment shall also be final and conclusive for the purposes of super-tax for the same assessment year.

Applicability of Act to super-tax.

97. (*1*) All the provisions of this Act relating to the charge, assessment, collection and recovery of income-tax shall apply, so far as may be and save as otherwise provided, to the charge, assessment, collection and recovery of super-tax.

(*2*) Save as expressly provided in any other section in this Chapter, the provisions of section 4, clause (*e*) of section 87, section 164, section 181 and sub-section (*1*) of section 191 and of Chapters VII and VIII and rule 7 of Part A of the Fourth Schedule and rule 3 (*c*) (*ii*) of the First Schedule shall not apply to the charge, assessment, collection and recovery of super-tax.

Avoidence of Super-tax

98. Without prejudice to the generality of the provisions of section 96, the *Explanation* to sub-section (*1*) of section 94, sub-sections (2), (3) and (6) of that section and section 270 shall apply in relation to super-tax as they apply in relation to income-tax, with the modification that references therein to income-tax shall be construed as references to super-tax.

B.—Incomes forming part of total income on which no super-tax is payable

Incomes not chargeable to Super-tax

99. (*1*) Super-tax shall not be payable by an assessee in respect of the following amounts which are included in his total income—

(*i*) if the assessee is a partner of an unregistered firm, any portion of the assessee's share in the profits and gains of the firm computed in the manner laid down in section 67 on which super-tax has already been paid by the firm;

(*ii*) if the assessee is a member of an association of persons or any other body of individuals, any portion of the amount which he is entitled to receive from the association or body, on which super-tax has already been paid by the association or body, as the case may be;

(*iii*) any dividends received by the assessee from a co-operative society as a member thereof;

(*iv*) if the assessee is a company, any dividend received by it from an Indian company formed and registered after the 31st day of March, 1952, where—

(*1*) the Central Government is satisfied that the Indian company is wholly or mainly engaged in an industry for the manufacture or production of any one or more of the following, namely:—

(*a*) Coal including coke and other derivatives;

(*b*) Iron and Steel (metal), ferro-alloys and special steels;

(*c*) Motor and aviation fuel, kerosene, crude oils and synthetic oils (not being oil exploration);

(*d*) Chemicals (other than fertilisers) of the following types;

(*i*) Inorganic heavy chemicals;

(*ii*) Organic heavy chemicals;

(*iii*) Fine chemicals (including photographic chemicals);

(*iv*) Synthetic rubber;

(*v*) Man-made fibres, other than viscose rayon;

(*vi*) Coke oven by-products;

(*vii*) Coal-tar distillation products like napthalene, anthracene and the like;

(*viii*) Explosives, including gun powder and safety fuses;

(*e*) Inorganic, organic and mixed fertilisers;

(*f*) Industrial machinery of the following types (including gear wheels and parts thereof, boilers and steam generating plants):—

A.—Major items of specialised equipment used in specific industries:

(*i*) Textile machinery (such as frames, carding machines, powerlooms and the like) including textile accessories;

(*ii*) Jute machinery;
(*iii*) Rayon machinery;
(*iv*) Sugar machinery;
(*v*) Tea machinery;
(*vi*) Mining machinery;
(*vii*) Metallurgical machinery;
(*viii*) Cement machinery;
(*ix*) Chemical machinery;
(*x*) Pharmaceuticals machinery;
(*xi*) Paper machinery;

B.—General items of machinery used in several industries, such as the equipment required for various 'unit processes':

(*i*) Size reduction equipment—crushers, ball mills and the like;

(*ii*) Conveying equipment—bucket elevators, skip hoists, cranes, derricks and the like;

(*iii*) Size separation units—screens, classifiers and the like;

(*iv*) Mixers and reactors—kneading mills, turbo mixers and the like;

(*v*) Filtration equipment—filter presses, rotary filters and the like;

(vi) Centrifugal machines;

(vii) Evaporators;

(viii) Distillation equipment;

(ix) Crystallisers;

(x) Driers;

(xi) Power driven pumps—reciprocating, centrifugal and the like;

(xii) Air and gas compressors and vacuum pipes (excluding electrical furnaces);

(xiii) Refrigeration plants for industrial use;

(xiv) Fire fighting equipment and appliances including fire engines;

C.—Other items of industrial Machinery:

(i) Ball, roller and tapered bearings;

(ii) Speed reduction units;

(iii) Grinding wheels and abrasives.

(g) Machinery and equipment for the generation, transmission and distribution of electric energy;

(h) Non-ferrous metals including alloys;

(i) Paper including newsprint and paper board;

(j) Internal combustion engines;

(k) Power-driven pumps;

(l) Automobiles;

(m) Tractors;

(n) Cement;

(o) Electric Motors;

(p) Locomotives;

(q) Rolling Stock;

(r) Machine Tools;

(s) Agriculture Implements;

(t) Ferro-manganese;

(u) Dye-stuffs; and

(v) Refractories; and

(2) the income of the Indian Company would have been exempt under the provisions of section 84, if the provisions of that section had been applicable thereto.

(*v*) where the assessee is a co-operative society, any income in respect whereof no income-tax is payable by it by virtue of the provisions of section 81.

(*2*) The exemption conferred by clause (*iv*) of sub-section (*1*), shall apply also to dividends payable to a company in respect of any fresh capital raised by an Indian Company after the 28th day of February, 1953, by public subscription for the purpose of increasing the production of or starting a separate unit of any one or more of the items specified in sub-clause (*1*) of clause (*iv*) of sub-section (*1*).

(*3*) Super-tax shall not be payable by an assessee which is an authority constituted under any law for the time being in force for the marketing of commodities on any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

C.—Rebate of super-tax

Donations for charitable purposes.

100. (*1*) Where under the provisions of section 88, an assessee is entitled to a deduction of income-tax in respect of any sum paid as donation, he shall also be entitled, subject to the provisions of sub-section (*4*) of that section, to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on such sum.

(2) The provisions of this section do not apply to a company.

Newly established industrial undertakings or hotels.

101. (*1*) The assessee shall be entitled to a deduction from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax, calculated at the average rate of super-tax, on profits or gains derived from an industrial undertaking or hotel in cases where and to the extent to which income-tax is not payable on such profits or gains under section 84.

(*2*) Subject to any rules that may be made by the Board in this behalf, a shareholder shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax, calculated at the average rate of super-tax, on so much of any dividend paid or deemed to be paid to him by an industrial undertaking or hotel as is attributable to that part of the profits or gains on which he is entitled to a deduction of super-tax under this section.

Share from registered firm.

102. Where the assessee is a partner of a registered firm, he shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to

the super-tax calculated at the average rate of super-tax on the following sum, that is to say—

the amount which represents the difference between—

(i) the assessee's share in the total income of the firm, and

(ii) his share in the total income of the firm as reduced by the income-tax, if any, payable by the firm, at the rate of income-tax applicable to its total income, on the amount of its income from all sources other than from any business carried on by it

the shares in either case being computed in the manner laid down in section 67.

Relief for salary, etc. received in arrear, etc.

103. The provisions of section 89 apply in relation to super-tax as they apply in relation to income-tax.

D.—Additional super-tax on undistributed profits

Super-tax on undistributed income of certain companies.

104. (1) Subject to the provisions of sub-section (2) and of sections 105, 106 and 107, where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company within the twelve months immediately following the expiry of that previous year are less than the statutory percentage of the distributable income of the company of that previous year, the Income-tax Officer shall make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment under section 143 or section 144, be liable to pay super-tax at the rate of—

(a) fifty per cent, in the case of an investment company, and

(b) thirty-seven per cent, in the case of any other company, on the distributable income as reduced by the dividends actually distributed, if any.

(2) The Income-tax Officer shall not make an order under sub-section (1) if he is satisfied—

(i) that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of dividend or a larger dividend than that declared would be unreasonable; or

(ii) that the payment of a dividend or a larger dividend than that declared would not have resulted in a benefit to the revenue; or

(iii) that at least 75 per cent. of the share capital of the company is throughout the previous year beneficially held by an institution or fund established in India for a charitable purpose the income whereof is exempt under section 11 or section 12.

Special provisions for certain companies.

105. (1) No order under section 104 shall be made,—

(i) in the case of an investment company which has distributed not less than eighty per cent of its distributable income; or

(ii) in the case of any other company whose distribution falls short of the statutory percentage by not more than ten per cent of its distributable income; or

(iii) in any case where according to the return made by a company under section 139 it has distributed not less than the statutory percentage of its distributable income, but in the assessment made by the Income-tax Officer under section 143 or section 144 a higher total income is arrived at and the difference in the total income does not arise out of the application of the proviso to sub-section (1) of section 145 or sub-section (2) of section 145 or section 144 or the omission by the company to disclose its income fully and truly; or

(iv) in the case of a company where a reassessment is made under the provisions of clause (b) of section 147 and the sum distributed as dividends falls short of the statutory percentage of the distributable income determined on the basis of the re-assessment:

unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice, a further distribution of its profits and gains so that the total distribution made is not less than the statutory percentage of the distributable income.

(2) Any further distribution made under sub-section (1) shall not be taken into account in deciding whether the provisions of section 104 apply in respect of the previous year in which the further distribution is made.

Period of limitation for making orders under section 104.

106. No order under section 104 shall be made after the expiry of four years from the end of the assessment year relevant to the previous year referred to in sub-section (1) of that section or after the expiry of one year from the end of the financial year in which the assessment or re-assessment of the profits and gains of the previous year aforesaid is made, whichever is later.

Approval of Inspecting Assistant Commissioner for orders under section 104.

107. No order shall be made by the Income-tax Officer under section 104 unless the previous approval of the Inspecting Assistant Commissioner has been obtained, and the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be made by the Income-tax Officer until he has given the company concerned an opportunity of being heard.

Savings for company in which public are substantially interested.

108. Nothing contained in section 104 shall apply—

(*a*) to any company in which the public are substantially interested; or

(*b*) to a subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

"Distributable income", "Investment company" and "statutory percentage" defined.

109. For the purposes of sections 104 and 105,—

(*i*) "distributable income" means the total income of a company as reduced by—

(*a*) the amount of income-tax and super-tax payable by the company in respect of its total income, but excluding the amount of any super-tax payable under section 104;

(*b*) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

(*c*) any sum in respect of which a deduction of income-tax is allowed under the provisions of section 88; and

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(*d*) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949;

(*ii*) "investment company" means a company whose business consists wholly or mainly in the dealing in or holding of investments;

(*iii*) "statutory percentage" means,—

(*1*) in the case of an investment company........90%

(*2*) in the case of an Indian company whose business consists wholly in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power........................50%

(3) in the case of an Indian company, a part only of whose business consists in any of the activities specified in the preceding clause—

(a) in relation to the said part of the company's business 50%

(b) in relation to the remaining part of the company's business—

(1) if it is a company which satisfies the conditions specified in sub-clause (a) of clause (4) .. 90%

(2) in any other case 65%

the said percentages being applied separately with reference to the amounts of profits and gains attributable to the two parts of the company's business aforesaid as if the said amounts were respectively the total income of the company in relation to each of its parts, the amount of dividends and taxes also being similarly apportioned, for the purposes of section 104 and this section;

(4) in the case of any other company not referred to in the preceding clauses,—

(a) where the accumulated profits and reserves (including depreciation reserves and any amounts capitalised from the earlier reserves) representing accumulations of past profits which have not been the subject of an order under section 104 or the corresponding provision of the Indian Income-tax Act, 1922 exceed— XI of 1922

either

I. the aggregate of—

(i) the paid-up capital of the company exclusive of the capital, if any, created out of its profits and gains which have not been the subject of an order under section 104, and

(ii) any loan capital which is the property of the shareholders;

or

II. the cost of the fixed assets as shown in the books of the company,

whichever of these is greater 90%

(b) where sub-clause (a) does not apply ...... 65%.

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

Determination of tax on income on which no tax is payable.

110. Where there is included in the total income of an assessee any income on which no income-tax or, as the case may be, no super-tax is payable under the provisions of this Act, the assessee shall be entitled to a deduction—

(*a*) from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable, and

(*b*) from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on the amount on which no super-tax is payable.

Tax on accumulated balance of recognised provident fund.

111. (*1*) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income, owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax in accordance with the provisions of sub-rule (*1*) of rule 9 thereof.

(*2*) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 of Part A of the Fourth Schedule becomes payable, super-tax shall be calculated in the manner provided in sub-rule (*2*) of rule 9 thereof.

Tax on compensation.

112. Where the total income of an assessee, being a person referred to in sub-clause (*a*), sub-clause (*b*) or sub-clause (*c*) of clause (*ii*) of section 28, includes any compensation or other payment which is chargeable as the profits and gains of business or profession in accordance with the provisions of clause (*ii*) of that section, the tax payable by him on his total income shall be—

(*i*) the income-tax payable on his total income as reduced by the amount of such compensation or other payment;

(*ii*) the super-tax payable on his total income as reduced by the amount of such compensation or other payment; and

(*iii*) the tax on such compensation or other payment equal to the amount which bears to the income-tax and super-tax which would have been payable on his total income as reduced by two-thirds of the amount of such inclusion the same proportion as the whole amount of such compensation or other payment bears to such reduced total income.

Tax in the case of non-resident.

113 (*1*) Where a person is a non-resident and is not a company, the tax payable by him or on his behalf, on his total income shall be an amount equal to—

(*a*) the income-tax which would be payable on his total income at the maximum rate, *plus*

(*b*) either the super-tax which would be payable on his total income at the rate of nineteen per cent or the super-tax which would be payable on his total income if it were the total income of a resident, whichever is greater.

(*2*) Notwithstanding anything contained in sub-section (*1*), where a citizen of India, not resident in India, is in receipt of salary from the Government for rendering service outside India, the tax payable by him on his total income for the assessment years commencing with the assessment year 1960-61 shall be determined with reference to his total world income in the manner specified in sub-sections (*3*) and (*4*).

(*3*) Any non-resident, other than a company, may, on or before the 30th day of June of the assessment year in which he first becomes assessable, by notice in writing to the Income-tax Officer, declare (such declaration being final and being applicable to all assessments thereafter) that the tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and thereupon, notwithstanding the provisions of sub-section (1), such tax shall be determined in accordance with sub-section (*4*).

(*4*) Where under the provisions of sub-section (*3*) any non-resident has exercised his option to be taxed with reference to his total world income, the tax payable by him or on his behalf shall be the tax payable on his total income as if it were his total world income or an amount bearing to the total amount of tax which would have been payable on his total world income had it been his total income the same proportion as the total income bears to the total world income, whichever is greater.

(5) Where any person referred to in sub-section (*1*) satisfies the Income-tax Officer that he was prevented by sufficient cause from making the declaration referred to in sub-section (*3*) or in any similar provision of the Indian Income-tax Act, 1922, on the first occasion on which he became assessable under this Act or the said Act, as the case may be, and his failure to make such declaration has not resulted in reducing his liability to tax for any year, the Income-tax Officef may, with the previous approval of the Inspecting Assistant Commissioner, allow such person to make the declaration

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at any time after the expiry of the period specified, and such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration) and all assessments for subsequent assessment years.

Tax on capital gains in cases of assessees other than companies.

114. Where the total income of an assessee, not being a company, includes any income chargeable under the head "Capital gains", the tax payable by him on his total income shall be—

(*a*) the amount of income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had the total income so reduced been his total income, *plus*

(*b*) the tax on the whole amount of such inclusion equal to the amount which bears to the income-tax which would have been payable on the total income as reduced by two-thirds of such inclusion the same proportion as the whole amount of such inclusion bears to such reduced total income:

Provided that—

(*i*) where the total income does not exceed the sum of ten thousand rupees, the amount payable under clause (*b*) shall be *nil*; and

(*ii*) in no case shall the amount payable under clause (*b*) exceed one-half of the amount, if any, by which the income chargeable under the head "Capital gains" exceeds the sum of five thousand rupees.

Tax on capital gains in case of companies.

115. Where the total income of a company includes any income chargeable under the head "Capital gains", the tax payable by it shall be—

(*a*) the amount of income-tax with which it is chargeable on its total income, *plus*

(*b*) the amount of super-tax equal to the aggregate of the tax calculated at the rate of ten per cent. on the amount of capital gains which is included and at the rate applicable to the company on its total income as reduced by the amount of the capital gains, had such reduced income been its total income.

CHAPTER XIII

INCOME-TAX AUTHORITIES

A.—Appointment and control

Income-tax authorities.

116. There shall be the following classes of Income-tax authorities for the purposes of this Act, namely:—

(*a*) the Central Board of Revenue,

(b) Directors of Inspection,

(c) Commissioners of Income-tax,

(d) Assistant Commissioners of Income-tax, who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,

(e) Income-tax Officers, and

(f) Inspectors of Income-tax.

Appointment of Income-tax authorities.

117. (1) The Central Government may appoint as many Directors of Inspection, Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I Service, as it thinks fit.

(2) The Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II Service and as many Inspectors of Income-tax as may be sanctioned by the Central Government.

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an Income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

Control of Income-tax authorities.

118. (1) Inspecting Assistant Commissioners shall be subordinate to the Commissioner within whose jurisdiction they perform their functions, and also to the Director of Inspection.

(2) Income-tax Officers shall be subordinate to the Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(3) Inspectors of Income-tax shall be subordinate to the Income-tax Officer or other Income-tax authority under whom they are appointed to work and to any other Income-tax authority to whom the said officer or other authority is subordinate.

Explanation.—For the purposes of sub-section (1), "Director of Inspection" does not include a Deputy Director of Inspection or an Assistant Director of Inspection; and for the purposes of sub-section (2), "Director of Inspection" does not include an Assistant Director of Inspection.

Instructions to subordinate authorities.

119. (*1*) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(*2*) Every Income-tax Officer employed in the execution of this Act shall observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions.

B.—Jurisdiction

Jurisdiction of Directors of Inspection.

120. Directors of Inspection shall perform such functions of any other Income-tax authority as may be assigned to them by the Board.

Jurisdiction of Commissioners.

121. (*1*) Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Board may direct.

(*2*) Where any directions issued under sub-section (*1*) have assigned to two or more Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction, subject to any orders which the Board may make for the distribution and allocation of the work to be performed.

Jurisdiction of Appellate Assistant Commissioners.

122. (*1*) Appellate Assistant Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Board may direct.

(*2*) Where any directions issued under sub-section (*1*) have assigned to two or more Appellate Assistant Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Board may make for the distribution and allocation of the work to be performed.

Jurisdiction of Inspecting Assistant Commissioners.

123. (*1*) Inspecting Assistant Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Commissioner may direct.

(*2*) Where any directions issued under sub-section (*1*) have assigned to two or more Inspecting Assistant Commissioners, the

same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Commissioner may make for the distribution and allocation of the work to be performed.

Jurisdiction of Income-tax Officers.

124. (*1*) Income-tax Officers shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Commissioner may direct.

(*2*) Where any directions issued under sub-section (*1*) have assigned to two or more Income-tax Officers, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Commissioner may make for the distribution and allocation of the work to be performed.

(*3*) Within the limits of the area assigned to him, the Income-tax Officer shall have jurisdiction—

(*a*) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(*b*) in respect of any other person residing within the area.

(*4*) Where a question arises under this section as to whether an Income-tax Officer has jurisdiction to assess any person, the question shall be determined by the Commissioner; or where the question is one relating to areas within the jurisdiction of different Commissioners, by the Commissioners concerned or if they are not in agreement, by the Board.

(*5*) No person shall be entitled to call in question the jurisdiction of an Income-tax Officer—

(*a*) after the expiry of one month from the date on which he has made a return under sub-section (*1*) of section 139 or after the completion of the assessment, whichever is earlier;

(*b*) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 139 or under section 148 for the making of the return.

(*6*) Subject to the provisions of sub-section (*5*), where an assessee calls in question the jurisdiction of an Income-tax Officer, then, the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (*4*) before assessment is made.

(7) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed.

Powers of Commissioner respecting specified cases or persons.

125. (*1*) The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act, shall, in respect of any specified case or classes of cases or of any specified persons or classes of persons, be exercised by the Inspecting Assistant Commissioner and the Commissioner respectively.

(*2*) Where an order under sub-section (*1*) is issued, then for the purposes of any case or person in respect of which any such order applies, references in this Act or in any rule made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner respectively.

(*3*) For the purposes of any case or person in respect whereof an order under sub-section (*1*) applies—

(*a*) any provision of this Act requiring an approval or sanction of the Inspecting Assistant Commissioner shall not apply;

(*b*) any appeal which would otherwise have lain to the Appellate Assistant Commissioner shall lie to the Commissioner;

(*c*) any appeal which would have lain from an order of the Appellate Assistant Commissioner to the Appellate Tribunal shall lie from the order of the Commissioner.

Powers of Board respecting specified cases, classes of persons or incomes.

126. Notwithstanding anything contained in the foregoing sections, the Board may, by notification in the Official Gazette, empower Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners and Income-tax Officers to perform such functions in respect of such area or of such classes of persons or of such classes of income as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the area or classes of persons or classes of income by the other authorities under section 121, section 122, section 123 or section 124.

Transfer of cases from one Income-tax Officer to another

127. (*1*) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one Income-tax Officer subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one Income-tax Officer to another:

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Income-tax Officer to another whose offices are situate in the same city, locality or place.

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

Explanation.—In this section and in sections 121 and 125, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

Functions of Inspectors of Income-tax.

128. Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other Income-tax authority under whom they are appointed to work.

Change of incumbent of an office.

129. Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order of assessment is passed against him, he be re-heard.

Authority competent to take or continue certain proceedings.

130. For the purposes of sections 253, 254, 256, 263 and 264, the Commissioner referred to therein shall, in relation to an assessee, be the Commissioner having for the time being jurisdiction over the assessee.

C.—Powers

Power regarding discovery, production of evidence, etc.

131. (*1*) The Income-tax Officer, Appellate Assistant Commissioner and Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

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(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(*c*) compelling the production of books of account and other documents; and

(*d*) issuing commissions.

(*2*) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the income-tax authority may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVII-D.

(*3*) Subject to any rules made in this behalf, any authority referred to in sub-section (*1*) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Income-tax Officer shall not—

(*a*) impound any books of account or other documents without recording his reasons for so doing, or

(*b*) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

Powers of search and seizure.

132. (*1*) Subject to any rules made in this behalf, any Income-tax Officer specially authorised by the Commissioner in this behalf may,—

(*i*) enter and search any building or place where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under this Act, may be found, and examine them, if found;

(*ii*) seize any such books of account or other documents and have them removed to his office, if necessary;

(*iii*) place marks of identification on any such books of account or other documents or make or cause to be made extracts or copies therefrom;

(*iv*) make a note or an inventory of any articles or things found in the course of any search under this section which in his opinion will be useful for, or relevant to, any proceeding under this Act.

(*2*) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall apply, so far as may be, to searches under this section. 5 of 1898.

Power to call for information.

133. The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner may, for the purposes of this Act,—

(*1*) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;

(*2*) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;

(*3*) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;

(*4*) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than four hundred rupees, together with particulars of all such payments made;

(*5*) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts;

(*6*) require any person, including a banking company or any officer thereof, to furnish information in relation to such

points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, giving information in relation to such points or matters as, in the opinion of the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, will be useful for, or relevant to, any proceeding under this Act.

Power to inspect registers of companies.

134. The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, or any person subordinate to him authorised in writing in this behalf by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, may inspect, and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

Power of Director of Inspection, Commissioner and Inspecting Assistant Commissioner.

135. The Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an Income-tax Officer has under this Act in relation to the making of enquiries.

Proceedings before Income-tax authorities to be judicial proceedings.

136. Any proceeding under this Act before an Income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. 45 of 1860.

D.—Disclosure of information

Disclosure of information prohibited.

137. (*1*) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made in the course of any proceedings under this Act, other than proceedings under Chapter XXII, or in any record of any assessment proceeding, or any proceeding relating to recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof. 1 of 1872.

(*2*) No public servant shall disclose any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record.

(3) Nothing in this section shall apply to the disclosure—

(*i*) of any such particulars for the purposes of a prosecution for any offence under the Indian Penal Code in respect of 45 of 1860. any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution for any offence under this Act; or

(*ii*) of any such particulars to any person acting in the execution of this Act, where it is necessary or desirable to disclose the same to him for the purposes of this Act; or

(*iii*) of any such particulars, where the disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand; or

(*iv*) of any such particulars to a civil court in any suit or proceeding to which the Government or any Income-tax authority is a party, which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any Income-tax authority to exercise any powers thereunder; or

(*v*) of any such particulars to the Comptroller and Auditor-General of India for the purpose of enabling him to discharge his functions under the Constitution; or

(*vi*) of any such particulars to any officer appointed by the Comptroller and Auditor-General of India or the Board to audit income-tax receipts or refunds; or

(*vii*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any person appointed Commissioner under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold 37 of 1850. such inquiry, or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of any such inquiry, or to a court in connection with the prosecution arising out of any such inquiry; or

(*viii*) with the previous permission of the Central Government, of any such particulars as may be required by any Commission of Inquiry appointed by the Central Government under the Commissions of Inquiry Act, 1952, or by any authority 60 of 1952. to which the provisions of that Act have been made applicable by the Central Government, for the purpose of any inquiry by such Commission or authority; or

(*ix*) of any such particulars relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a legal practitioner or chartered accountant, to the authority empowered to take disciplinary action against members of the profession to which he belongs; or

(*x*) of any such particulars by any public servant, where the disclosure is occasioned by the lawful exercise by him of 2 of 1899. his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document; or

(*xi*) of such facts, to an authorised officer of the Government of any country outside India for the granting of relief in respect of or avoidance of double taxation as may be necessary for the purpose of enabling such relief or a refund under section 90 to be given or such avoidance under that section to be made effective; or

(*xii*) of such facts, to an officer of a State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it; or

(*xiii*) of such facts, to an officer of the Central Government as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it; or

(*xiv*) of such facts, to any authority exercising powers under 8 of 1878. the Sea Customs Act, 1878, or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers; or

(*xv*) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll; or

(*xvi*) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established; or

(*xvii*) of such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investment and balance of payments; or

(*xviii*) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct

and affairs of any public servant or to a court in connection with any prosecution of the public servant arising out of any such investigation; or

(*xix*) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Act, 1950, for the purpose of enabling him to discharge the duties imposed upon him by or under the said Act; or 31 of 1950.

(*xx*) of so much of such particulars to any person as is evidence of the fact that any property does not belong to the assessee but belongs to such person:

Provided that the assessee had, prior to such disclosure, been examined by the Income-tax Officer in respect of his right to such property.

(*4*) Nothing in this section shall apply to the production by a public servant before a court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 171 or sections 184 to 186 or to the giving of evidence by a public servant in respect thereof.

(*5*) Nothing in this section shall be construed as prohibiting the voluntary disclosure of any particulars referred to in sub-section (*1*) by the person by whom the statement was made, the return furnished, the accounts or documents produced, the evidence given or the affidavit or deposition made, as the case may be.

Explanation.—In this section, "public servant" means any public servant employed in the execution of this Act.

Disclosure of information respecting tax payable.

138. Where a person makes an application to the Commissioner in the prescribed form and pays the prescribed fee for information as to the amount of tax determined as payable by any assessee in respect of any assessment made either under this Act or the Indian Income-tax Act, 1922, on or after the 1st day of April 1960, the Commissioner may, notwithstanding anything contained in section 137, if he is satisfied that there are no circumstances justifying its refusal, furnish or cause to be furnished the information asked for. 11 of 1922.

CHAPTER XIV

PROCEDURE FOR ASSESSMENT

Return of income.

139. (*1*) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or

the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed—

(*a*) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later;

(*b*) in all other cases, before the 30th day of June of the assessment year:

Provided that on an application made in the prescribed manner, the Income-tax Officer may, in his discretion, extend the date for furnishing the return in the case of any person—

(*i*) upto a period not extending beyond the 30th day of September of the assessment year without charging any interest, and

(*ii*) upto any period falling beyond the date mentioned in clause (*i*), in which case, interest at six per cent. per annum shall be payable on the amount of tax that may be found due on completion of the regular assessment, from the 1st day of October of the assessment year to the date of the furnishing of the return.

(*2*) In the case of any person who, in the Income-tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided that the Income-tax Officer may, in his discretion, extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September of the assessment year, the provisions of sub-clause (*ii*) of the proviso to sub-section (*1*) shall apply.

(*3*) If any person who has not been served with a notice under sub-section (*2*), has sustained a loss in any previous year under the

head "Profits and gains of business or profession", and claims that the loss or any part thereof should be carried forward under sub-section (*1*) of section 72 or sub-section (*2*) of section 73, he may furnish, within the time allowed under sub-section (*1*), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (*1*).

(*4*) Any person who has not furnished a return within the time allowed to him under sub-section (*1*) or sub-section (*2*) may furnish a return of his total income for any previous year at any time before the end of four assessment years from the end of the assessment year to which the return relates, and the provisions of sub-clause (*ii*) of the proviso to sub-section (*1*) shall apply in every such case.

(*5*) If any person having furnished a return under sub-section (*1*) or sub-section (*2*), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made.

(*6*) The prescribed form of the returns referred to in sub-sections (*1*), (*2*) and (*3*) shall, in the case of an assessee engaged in business or profession, require him to furnish particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and if he is a member of an association or body of individuals, the names of the other members of the association or the body and the extent of the share of the assessee and the shares of all such partners or the members, as the case may be, in the profits of the business or profession and any branches thereof.

(*7*) No return under sub-section (*1*) need be furnished by any person for any previous year if he has already furnished a return of income for such year in accordance with the provisions of sub-section (*2*).

Return by whom to be signed

140. The return under section 139 shall be signed and verified—

(*a*) in the case of an individual, by the individual himself; where the individual is absent from India, by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the Karta, and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by some person competent to act on his behalf.

Provisional assessment.

141. (1) The Income-tax Officer may, at any time after the receipt of a return made under section 139, proceed to make, in a summary manner, a provisional assessment of the tax payable by the assessee. on the basis of his return and the accounts and documents, if any. accompanying it.

(2) In making any assessment under this section due effect shall be given to—

(a) the allowance referred to in sub-section (2) of section 32; and

(b) any loss carried forward under sub-section (1) of section 72 or sub-section (2) of section 73.

(3) A partner of a firm may be assessed under sub-section (1) in respect of his share in the income of the firm, if its return has been received, even if the return of the partner himself has not been received.

(4) A firm may be assessed under sub-section (1) as an unregistered firm, except in the following cases, where it shall be assessed as a registered firm—

(a) where the firm was assessed as a registered firm for the latest assessment year for which its assessment has been completed, and it has before the expiry of the period laid down in Chapter XVI-B filed its application for registration or declaration under sub-section (7) of section 184 for the assessment year for which the provisional assessment is to be made;

(b) where no regular assessment has been made on the firm for any assessment year preceding the assessment year for which the provisional assessment is to be made, and the firm has, before the expiry of the period laid down in Chapter XVI-B filed its application for registration, or declaration as aforesaid, for the assessment year for which the provisional assessment is to be made.

(5) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(6) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination, on the merits, of any issue which may arise in the course of the regular assessment.

(7) There shall be no right of appeal against a provisional assessment made under sub-section (1).

Enquiry before assessment.

142. (1) For the purpose of making an assessment under this Act, the Income-tax Officer may serve on any person who has made a return under section 139 or upon whom a notice has been served under sub-section (2) of section 139 (whether a return has been made or not) a notice requiring him, on a date to be therein specified,—

(i) to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, or

(ii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Income-tax Officer may require:

Provided that—

(a) the previous approval of the Inspecting Assistant Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;

(b) the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(2) For the purpose of obtaining full information in respect of the income or loss of any person, the Income-tax Officer may make such enquiry as he considers necessary.

(3) The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any enquiry under sub-section (2) and proposed to be utilised for the purpose of the assessment.

143. (*1*) Where a return has been made under section 139 and the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee, and shall determine the sum payable by him or refundable to him on the basis of such return. Assessment.

(*2*) Where a return has been made under section 139 but the Income-tax Officer is not satisfied without requiring the presence of the assessee or the production of evidence that the return is correct and complete, he shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which the assessee may rely in support of the return.

(*3*) On the day specified in the notice issued under sub-section (*2*), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as the assessee may produce and such other evidence as the Income-tax Officer may require on specified points, and after taking into account all relevant material which the Income-tax Officer has gathered, shall, by an order in writing, assess the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment.

144. If any person— Best Judgment Assessment.

(*a*) fails to make the return required by any notice given under sub-section (2) of section 139 and has not made a return or a revised return under sub-section (*4*) or sub-section (5) of that section, or

(*b*) fails to comply with all the terms of a notice issued under sub-section (*1*) of section 142, or

(*c*) having made a return, fails to comply with all the terms of a notice issued under sub-section (*2*) of section 143,

the Income-tax Officer, after taking into account all relevant material which the Income-tax Officer has gathered, shall make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

Method of accounting.

145. (*1*) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee:

Provided that in any case where the accounts are correct and complete to the satisfaction of the Income-tax Officer but the method employed is such that, in the opinion of the Income-tax Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

(*2*) Where the Income-tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income-tax Officer may make an assessment in the manner provided in section 144.

Reopening of assessment at the instance of the assessee.

146. Where an assessee assessed under section 144 makes an application to the Income-tax Officer, within one month from the date of service of a notice of demand issued in consequence of the assessment, for the cancellation of the assessment on the ground—

(*i*) that he was prevented by sufficient cause from making the return required under sub-section (*2*) of section 139, or

(*ii*) that he did not receive the notice issued under sub-section (*1*) of section 142 or sub-section (*2*) of section 143, or

(*iii*) that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of any notice referred to in clause (*ii*),

the Income-tax Officer shall, if satisfied about the existence of such ground, cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of sections 143 and 144.

Income escaping assessment.

147. If—

(*a*) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return of his income under section 139 for any assessment year to the Income-tax Officer having jurisdiction over him or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(*b*) notwithstanding that there has been no omission or failure as mentioned in clause (*a*) on the part of the assessee,

the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of sections 148 to 153 assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(*a*) where income chargeable to tax has been under-assessed; or

(*b*) where such income has been assessed at too low a rate; or

(*c*) where such income has been made the subject of excessive relief under this Act or under the Indian Income-tax Act, 1922; or

11 of 1922.

(*d*) where excessive loss or depreciation allowance has been computed.

Explanation 2.—Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

Issue of notice where income has escaped assessment

148. (*1*) Before making the assessment, reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

(*2*) The Income-tax Officer shall, before issuing any notice under this section, record his reasons for doing so.

Time limit for notice

149. (*1*) No notice under section 148 shall be issued,

(*a*) in cases falling under clause (*a*) of section 147—

(*i*) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*);

(*ii*) for the relevant assessment year, where eight years have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to

or is likely to amount to rupees fifty thousand or more for that year;

(*iii*) for the relevant assessment year, where eight years, but not more than sixteen years, have elapsed from the end of that year and the case does not fall under sub-clause (*ii*), unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh of rupees in the aggregate for that year and for any other year or years within the aforesaid period;

(*b*) in cases falling under clause (*b*) of section 147, at any time within a period of four years from the end of the relevant assessment year.

(*2*) The provisions of sub-section (*1*) as to the issue of notice shall be subject to the provisions of sub-section (*2*) of section 151.

(*3*) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

Provision for cases where assessment is in pursuance of an order on appeal, etc.

150. Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision.

Sanction for issue of notice.

151. (*1*) No notice shall be issued under section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

(*2*) No notice shall be issued under section 148 after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

Other provisions.

152. (*1*) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

(*2*) Where an assessment is reopened in circumstances falling under clause (*b*) of section 147, the assessee may, if he has not impugned any part of the original assessment order for that year

either under sections 246 to 248 or under section 264 claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made:

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 154, 155, 260, 262 or 263.

Time limit for completion of assessments and reassessments.

153. (*1*) No order of assessment shall be made under section 143 or section 144 at any time after—

(*a*) the expiry of four years from the end of the assessment year in which the income was first assessable; or

(*b*) the expiry of eight years from the end of the assessment year in which the income was first assessable, in a case falling within clause (*c*) of sub-section (*1*) of section 271; or

(*c*) the expiry of one year from the date of the filing of a return or a revised return under sub-section (*4*) or sub-section (*5*) of section 139,

whichever is latest.

(*2*) No order of assessment, reassessment or recomputation shall be made under section 147—

(*a*) where the assessment, reassessment or recomputation is to be made under clause (*a*) of that section, after the expiry of four years from the end of the assessment year in which the notice under section 148 was served;

(*b*) where the assessment, reassessment or recomputation is to be made under clause (*b*) of that section, after—

(*i*) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(*ii*) the expiry of one year from the date of service of the notice under section 148,

whichever is later.

(*3*) The provisions of sub-sections (*1*) and (*2*) shall not apply to the following classes of assessments, reassessments and recomputations which may be completed at any time—

(*i*) where a fresh assessment is made under section 146;

(*ii*) where the assessment or reassessment is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 259, 260, 262, 263 or 264,

(*iii*) where in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

Explanation 1.—In computing the period of limitation for the purposes of this section, the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under the proviso to section 129 or any period during which the assessment proceeding is stayed by an order or injunction of any court, shall be excluded.

Explanation 2.—Where, by an order under sections 250, 254, 259, 260, 262, 263 or 264 any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 3.—Where by an order under section 250, 254, 259, 260, 262, 263 or 264 any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.

Rectification of mistake.

154. (*1*) With a view to rectifying any mistake apparent from the record—

(*a*) the Income-tax Officer may amend any order of assessment or of refund or any other order passed by him;

(*b*) the Appellate Assistant Commissioner may amend any order passed by him in appeal under section 250;

(*c*) the Commissioner may amend any order passed by him in revision under section 263 or section 264.

(*2*) Subject to the other provisions of this section, the authority concerned—

(*a*) may make an amendment under sub-section (*1*) of its own motion, and

(*b*) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and

where the authority concerned is the Appellate Assistant Commissioner, by the Income-tax Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the Income-tax authority concerned.

(5) Subject to the provisions of section 241 where any such amendment has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the date of the order sought to be amended.

Other amendments.

155. (1) Where in respect of any completed assessment of a partner in a firm it is found—

(a) on the assessment or reassessment of the firm, or

(b) on any reduction or enhancement made in the income of the firm under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264,

that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the firm.

(2) Where in respect of any completed assessment of a member of an association of persons or of a body of individuals it is found—

(a) on the assessment or reassessment of the association or body, or

(b) on any reduction or enhancement made in the income of the association or body under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264,

that the share of the member in the income of the association or body, as the case may be, has not been included in the assessment of the member or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the association or body, as the case may be.

(3) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or any other proceeding, or where any excess profits tax has been assessed after the completion of the corresponding assessment for income-tax and in consequence thereof, it is necessary to amend the total income of the assessee chargeable to income-tax, the Income-tax Officer may make the necessary amendment and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order making or modifying the assessment of such excess profits tax or business profits tax, as the case may be.

Explanation.—For the purposes of this sub-section, where the assessee is a firm, the provisions of sub-section (1) shall also apply as they apply to the amendment of the assessment of the partners of the firm.

(4) Where as a result of proceedings initiated under section 147, a loss or depreciation has been recomputed and in consequence thereof it is necessary to recompute the total income of the assessee for the succeeding year or years to which the loss or depreciation allowance has been carried forward and set off under the provisions of sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) of section 74, the Income-tax Officer may proceed to recompute the total income in respect of such year or years and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order passed under section 147,

(5) Where an allowance by way of development rebate has been made wholly or partly to an assessee in respect of a ship, machinery or plant in any assessment year under section 33 and subsequently—

(*i*) at any time before the expiry of eight years from the end of the previous year in which the ship was acquired or the machinery or plant was installed, the ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act 1956, or in connection with any amalgamation or succession referred to in sub-section (*3*) of section 33; or

1 of 1956.

(*ii*) at any time before the expiry of the ten years referred to in sub-section (*3*) of section 34, the assessee utilises the amount credited to the reserve account under clause (*a*) of that sub-section—

(*a*) for distribution by way of dividends or profits; or

(*b*) for remittance outside India as profits or for the creation of any asset outside India; or

(*c*) for any other purpose which is not a purpose of the business of the undertaking;

the development rebate originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (*7*) of that section being reckoned from the end of the previous year in which the sale or transfer took place or the money was so utilised.

(6) Where any such debt or part of debt as is referred to in clause (*vii*) of sub-section (*1*) of section 36 is written off as irrecoverable in the accounts of the assessee for a previous year and the Income-tax Officer is satisfied that such debt or part thereof became a bad debt in an earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which the debt or part is written off, the Income-tax Officer may, notwithstanding anything contained in this Act, allow such debt or part as a deduction for such earlier previous year, if the assessee accepts such a finding of the Income-tax Officer, and recompute the total income of the assessee for such earlier previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four

years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment relating to the previous year in which the debt is written off is made.

(7) Where as a result of any proceeding under this Act, in the assessment for any year of a company in whose case an order under section 104 has been made for that year, it is necessary to recompute the distributable income of that company, the Income-tax Officer may proceed to recompute the distributable income and determine the supertax payable on the basis of such recomputation and make the necessary amendment, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the company in respect of that proceeding.

Notice of demand.

156. When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Income-tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

Intimation of loss.

157. When, in the course of the assessment of the total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set off under the provisions of sub-section (*1*) of section 72, sub-section (*2*) of section 73 or sub-section (*1*) of section 74, the Income-tax Officer shall notify to the assessee by an order in writing the amount of the loss as computed by him for the purposes of sub-section (*1*) of section 72, sub-section (*2*) of section 73 or sub-section (*1*) of section 74.

Intimation of assessment of firm.

158. Whenever a registered firm is assessed, or an unregistered firm is assessed under the provisions of clause (*b*) of section 183, the Income-tax Officer shall notify to the firm by an order in writing the amount of its total income assessed and the apportionment thereof between the several partners.

CHAPTER XV

LIABILITY IN SPECIAL CASES

A.—Legal representatives

Legal representatives.

159. (*1*) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(*2*) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the

income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (*1*),—

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(*c*) all the provisions of this Act shall apply accordingly.

(*3*) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(*4*) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession.

(*5*) The provisions of sub-section (*2*) of section 161, section 162 and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(*6*) The liability of a legal representative under this section shall, subject to the provisions of sub-section (*4*) and sub-section (*5*), be limited to the extent to which the estate is capable of meeting the liability.

B.—Representative assessees—general provisions

160. (*1*) For the purposes of this Act, "representative assessee" means—

(*i*) in respect of the income of a non-resident specified in clause (*i*) of sub-section (*1*) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;

(*ii*) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;

(*iii*) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or

manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) receives or is entitled to receive, on behalf or for the benefit of any person, such trustee or trustees. 6 of 1913.

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

Liability of representative assessee.

161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

Right of representative assessee to recover tax paid.

162. (1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending

final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

C.—Representative assessees—special cases

Who may be regarded as agent.

163. (*1*) For the purposes of this Act, "agent", in relation to a non-resident, includes any person in India—

(*a*) who is employed by or on behalf of the non-resident; or

(*b*) who has any business connection with the non-resident; or

(*c*) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(*d*) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India:

Provided that a broker in India who in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:—

(*i*) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(*ii*) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as as a principal.

(*2*) No person shall be treated as the agent of a non-resident unless he had had an opportunity of being heard by the Income-tax Officer as to his liability to be treated as such.

Charge of tax where share of beneficiaries unknown.

164. Where any income in respect of which the persons mentioned in clauses (*iii*) and (*iv*) of sub-section (*1*) of section 160 are liable as representative assessees or any part thereof, is not specifically receivable on behalf or for the benefit of any one person, or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable (which persons are hereinafter in this section referred to as the beneficiaries) are indeterminate or unknown, tax shall be charged as if such income or

such part thereof were the total income of an association of persons, or, where such income or such part thereof is actually received by a beneficiary, then at the rate or rates applicable to the total income or total world income of the beneficiary if such course would result in a benefit to the revenue.

Case where part of trust income is chargeable.

165. Where part only of the income of a trust is chargeable under this Act, that proportion only of the income receivable by a beneficiary from the trust which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part.

D.—*Representative assessees—miscellaneous provisions*

Direct assessment not barred.

166. Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

Remedies against property in cases of representative assessees.

167. The Income-tax Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

E.—Executors

Executors.

168. *(1)* Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

(*a*) if there is only one executor, then, as if the executor were an individual; or

(*b*) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of

complete distribution to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, "executor" includes an administrator or other person administering the estate of a deceased person.

Right of executor to recover tax paid.

169. The provisions of section 162 shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him as they apply in the case of a representative assessee.

F.—Succession to business or profession

Succession to business otherwise than on death.

170. (*1*) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

(*a*) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(*b*) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(*2*) Notwithstanding anything contained in sub-section (*1*), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(*3*) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the Income-tax Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

G.—Partition

Assessment after partition of a Hindu undivided family.

171. (*1*) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(*2*) Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Income-tax Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(*3*) On the completion of the inquiry, the Income-tax Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(*4*) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section, and the partition took place during the previous year,—

(*a*) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and

(*b*) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (*2*) of section 10, be jointly and severally liable for the tax on the income so assessed.

(*5*) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section, and the partition took place after the expiry of the previous year, the total income of the

previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of clause (*b*) of sub-section (*4*) shall, so far as may be, apply to the case.

(*6*) Notwithstanding anything contained in this section, if the Income-tax Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the Income-tax Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(*7*) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(*8*) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

Explanation.—In this section.—

(*a*) "partition" means—

(*i*) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(*ii*) where the property does not admit of a physical division, then such division as the property admits of but a mere severance of status shall not be deemed to be a partition;

(*b*) "partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

H.—Profits of non-residents from occasional shipping business

Shipping business of non-residents.

172. (*1*) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, live-stock, mail or goods shipped at a port in India, unless the

Income-tax Officer is satisfied that there is an agent of the non-resident from whom the tax will be recoverable under the other provisions of this Act.

(2) Where such a ship carries passengers, live-stock, mail or goods shipped at a port in India, one-sixth of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

(3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, live-stock, mail or goods shipped at that port since the last arrival of the ship thereat:

Provided that where the Income-tax Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the Income-tax Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the Income-tax Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates for the time being applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.

(5) For the purpose of determining the tax payable under sub-section (4), the Income-tax Officer may call for such accounts or documents as he may require.

(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, live-stock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

I.—Recovery of tax in respect of non-residents

Recovery of tax in respect of non-residents from his assets.

173. Without prejudice to the provisions of sub-section (*1*) of section 161 or of section 167, where the person entitled to the income referred to in clause (*i*) of sub-section (*1*) of section 9 is a non-resident, the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee, may be recovered by deduction under any of the provisions of Chapter XVII-B and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident which are, or may at any time, come within India.

J.—Persons leaving India

Assessment of persons leaving India.

174. (*1*) Notwithstanding anything contained in section 4, when it appears to the Income-tax Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.

(*2*) The total income of each completed previous year or part of any previous year included, in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(*3*) The Income-tax Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(*4*) For the purpose of making an assessment under sub-section (*1*), the Income-tax Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (*2*) of section 139, setting forth his total income for each completed previous year comprised in the period referred to in sub-section (*1*) and his estimated total income for any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under sub-section (*2*) of section 139.

(*5*) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(*6*) Where the provisions of sub-section (*1*) are applicable, any notice issued by the Income-tax Officer under sub-section (*2*) of section 139 or sub-section (*1*) of section 148 in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in sub-section (*2*) of section 139 or sub-section (*1*) of section 148, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the Income-tax Officer may think proper.

K.—Persons trying to alienate their assets

Assessment of persons likely to transfer property to avoid tax.

175. Notwithstanding anything contained in section 4, if it appears to the Income-tax Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the Income-tax Officer commences proceedings under this section shall be chargeable to tax in that assessment year, and the provisions of sub-sections (*2*), (*3*), (*4*), (*5*) and (*6*) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

L.—Discontinuance of business, or dissolution

Discontinued business.

176. (*1*) Notwithstanding anything contained in section 4, where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for

that assessment year up to the date of such discontinuance may, at the discretion of the Income-tax Officer, be charged to tax in that assessment year.

(2) The total income of each such completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) Any person discontinuing any business or profession shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof.

(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

(5) Where an assessment is to be made under the provisions of this section, the Income-tax Officer may serve on the person whose income is to be assessed or, in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139 and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under sub-section (2) of section 139.

(6) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(7) Where the provisions of sub-section (1) are applicable, any notice issued by the Income-tax Officer under sub-section (2) of section 139 or sub-section (1) of section 148 in respect of any tax chargeable under any other provisions of this Act may, notwithstanding anything contained in sub-section (2) of section 139 or sub-section (1) of section 148, as the case may be, require the furnishing of the return by the person to whom the aforesaid notices are issued within such period, not being less than seven days, as the Income-tax Officer may think proper.

Association dissolved or business discontinued.

177. (*1*) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the Income-tax Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.

(*2*) Without prejudice to the generality of the foregoing sub-section, if the Income-tax Officer, Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceeding under this Act in respect of any such association of persons as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts specified in Chapter XXI, he or it may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(*3*) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(*4*) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (*3*) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(*5*) Nothing in this section shall affect the provisions of sub-section (*6*) of **section 159.**

Company in liquidation.

178. (*1*) Every person—

(*a*) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(*b*) who has been appointed the receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(*2*) The Income-tax Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the

liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) On being notified by the Income-tax Officer under sub-section (2), the liquidator shall set aside an amount equal to the amount so notified and until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hands except for the purpose aforesaid.

(4) The liquidator shall, if he has not set aside the amount notified under sub-section (3), be personally liable to the extent of that amount for the payment of the tax on behalf of the company.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

M.—Private company in liquidation

179. (1) Notwithstanding anything contained in the Companies Act, 1956, where any tax which is or has been assessed on a private company, whether before or in the course of or after its liquidation, in respect of any income of any previous year cannot be recovered from the company, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

Private company in liquidation.

1 of 1956.

(2) Where the whole or any portion of any tax for the payment of which the directors of a private company are made jointly and severally liable under sub-section (1) cannot be recovered from the directors, such tax or portion shall be recoverable from every person who was a shareholder of the company holding beneficially shares carrying not less than ten per cent. of the voting power at any time during the previous year, but the tax or portion recoverable from each such person shall not exceed the proportion which the share capital held by him beneficially bears to the total capital of the company.

N.—Special provisions for certain kinds of income

180. Where the time taken by the author of a literary or artistic work in the making thereof is more than twelve months, the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work or of royal-

Royalties or copyright fees for literary or artistic work.

ties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment as hereunder—

(i) where the time so taken is less than twenty-four months, one-half of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and the other half as the income of the next succeeding previous year; and

(ii) where the time so taken is twenty-four months, or more, one-third of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and one-third of the said amount as the income of each of the two next succeeding previous years.

Explanation.—For the purposes of this section, the expression "author" includes a joint author, and the expression "lump sum", in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

O.—Liability of State Governments

Interest on tax free securities of a State Government.

181. Income-tax shall be payable by a State Government on the interest on any security issued by it tax free.

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

A.—Assessment of firms

Assessment of registered firms.

182. (1) Notwithstanding anything contained in sections 143 and 144 and subject to the provisions of sub-section (3), in the case of a registered firm, after assessing the total income of the firm,—

(i) the income-tax payable by the firm itself shall be determined; and

(ii) the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly.

(2) If such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of sections 70 to 75.

(3) When any of the partners of a registered firm is a non-resident, the tax on his share in the income of the firm shall be assessed

on the firm at the rate or rates which would be applicable if it were assessed on him personally, and the tax so assessed shall be paid by the firm.

(*4*) When the tax levied on a partner of a registered firm on his share in the income of the firm cannot be recovered from him, the amount not so recovered shall be paid by the firm.

Assessment of unregistered firms.

183. In the case of an unregistered firm, the Income-tax Officer—

(*a*) may determine the tax payable by the firm itself on the basis of the total income of the firm; or

(*b*) if, in his opinion, the aggregate amount of the tax payable by the partners if the firm were treated as a registered firm would be greater than the aggregate amount of the tax which would be payable by the firm under clause (*a*) and the tax which would be payable by the partners individually, may proceed to make the assessment under clause (*ii*) of sub-section (*1*) of section 182 as if the firm were a registered firm; and where the procedure specified in this clause is applied to any unregistered firm, the provisions of sub-sections (*2*), (*3*) and (*4*) of section 182 shall apply thereto as they apply in the case of a registered firm.

B.—Registration of firms

Application for registration.

184. (*1*) An application for registration of a firm for the purposes of this Act may be made to the Income-tax Officer on behalf of any firm if—

(*i*) the partnership is evidenced by an instrument; and

(*ii*) the individual shares of the partners are specified in that instrument.

(*2*) Such application may, subject to the provisions of this section, be made either during the existence of the firm or after its dissolution.

(*3*) The application shall be made to the Income-tax Officer having jurisdiction to assess the firm, and shall be signed—

(*a*) by all the partners (not being minors) personally; or

(*b*) in the case of a dissolved firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(*4*) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought:

Provided that the Income-tax Officer may entertain an application made after the end of the previous year, if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year.

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof:

Provided that if the Income-tax Officer is satisfied that for sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners (not being minors), or, where the application is made after the dissolution of the firm, by all the persons referred to in clause (*b*) of sub-section (*3*), to be a correct copy, or a certified copy of the instrument; and in such cases the application shall be accompanied by a duplicate copy of the original instrument.

(*6*) The application shall be made in the prescribed form and shall contain the prescribed particulars.

(*7*) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year:

Provided that—

(*i*) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted; and

(*ii*) the firm furnishes, along with its return of income for the assessment year concerned, a declaration to that effect, in the prescribed form and verified in the prescribed manner.

(*8*) Where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section.

Procedure on receipt of application.

185. (*1*) On receipt of an application for the registration of a firm, the Income-tax Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and—

(*a*) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year;

(*b*) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

(2) The Income-tax Officer shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation.

(3) If the defect is not rectified within such time, the Income-tax Officer may reject the application.

(4) Where a firm is registered for any assessment year, the Income-tax Officer shall record a certificate on the instrument of partnership or on the certified copy submitted in lieu of the original instrument, as the case may be, to the effect that the firm has been registered under this Act, for that assessment year; and where a declaration under sub-section (7) of section 184 is furnished by the firm, for the relevant subsequent assessment year.

(5) Notwithstanding anything contained in this section, where, in respect of any assessment year, there is, on the part of a firm, any such failure as is mentioned in section 144, the Income-tax Officer may refuse to register the firm for the assessment year.

Cancellation of registration.

186. (*1*) If, where a firm has been registered, or its registration has effect under sub-section (7) of section 184 for an assessment year, the Income-tax Officer is of opinion that there was during the previous year no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard and with the previous approval of the Inspecting Assistant Commissioner, cancel the registration of the firm for that assessment year.

(*2*) If, where a firm has been registered or its registration has effect under sub-section (7) of section 184 for any assessment year, there is, on the part of the firm, any such failure in respect of the assessment year as is mentioned in section 144, the Income-tax Officer may cancel the registration of the firm for the assessment year, after giving the firm not less than fourteen days' notice intimating his intention to cancel its registration and after giving it a reasonable opportunity of being heard.

(*3*) Where the registration of a firm is cancelled for any assessment year, the Income-tax Officer shall amend the assessments of the firm and its partners for that assessment year on the footing that the firm is an unregistered firm.

(*4*) The provisions of section 154 shall, so far as may be, apply to the amendments of the assessments of the firm and its partners under sub-section (3) of this section, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order cancelling the registration.

C.—Changes in constitution, succession and dissolution

Change in constitution of a firm.

187. (*1*) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment:

Provided that—

(*i*) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same; and

(*ii*) when the tax assessed upon a partner cannnct be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

(*2*) For the purposes of this section, there is a change in the constitution of the firm—

(*a*) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or

(*b*) where all the partners continue with a change in their respective shares or in the shares of some of them.

Succession of one firm by another firm.

188. Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 170.

Firm dissolved or business discontinued.

189. (*1*) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Income-tax Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(*2*) Without prejudice to the generality of the foregoing subsection, if the Income-tax Officer, Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceeding under this Act in respect of any such firm as is referred to in that subsection is satisfied that the firm was guilty of any of the acts specified in Chapter XXI he or it may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

CHAPTER XVII

COLLECTION AND RECOVERY OF TAX

A.—General

190. (1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter. **Deduction at source and advance payment.**

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.

191. (1) In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct. **Direct payment.**

(2) Save as provided in this Chapter, super-tax shall be payable by the assessee direct.

B.—Deduction at source

192. (1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax and super-tax on the amount payable at the average rate of income-tax and average rate of super-tax respectively computed on the basis of the rates of tax in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. **Salary.**

(2) Any person responsible for paying any income chargeable under the head "Salaries" to a non-resident, not being a citizen of India, in receipt of salary from the Government for rendering service outside India, shall, at the time of payment, deduct tax at the rates in force on the estimated income of the assessee under this head for the financial year.

(3) The person responsible for making the payment referred to in sub-section (1) or sub-section (2) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(4) The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 of Part A of the Fourth Schedule applies, at the time an accumulated balance due to an employee is paid, make therefrom the deduction provided in rule 10 of Part A of the Fourth Schedule.

(5) Where any contribution made by an employer, including interest on such contributions, if any, in an approved superannuation fund is paid to the employee, income-tax on the amount so paid shall be deducted by the trustees of the fund to the extent provided in rule 6 of Part B of the Fourth Schedule.

(6) For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

Explanation.—In sub-section (2), and in sections 193, 194, 195 and 197, the expression "rates in force" means the rate or rates specified for the purpose of deduction by the Finance Act of the year in which such deduction is required to be made.

Interest on securities.

193. The person responsible for paying any income chargeable under the head "Interest on securities" shall, at the time of payment, deduct income-tax and super-tax at the rates in force on the amount of the interest payable.

Dividends.

194. The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, of any dividend within the meaning of sub-clause (*a*) or sub-clause (*b*) or

sub-clause (*c*) or sub-clause (*d*) or sub-clause (*e*) of clause (*22*) of section 2, deduct from the amount of such dividend, income-tax and super-tax at the rates in force.

Other sums.

195. (*1*) Any person responsible for paying to a non-resident, not being a company, or to a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India, any interest, not being "Interest on securities", or any other sum, not being dividends, chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay any income-tax and super-tax thereon as an agent, deduct income-tax and super-tax thereon at the rates in force:

Provided that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which a person responsible for the payment is deemed under the proviso to sub-section (*1*) of section 163 not to be an agent of the payee.

(*2*) Where the person responsible for paying any such sum chargeable under this Act (other than interest including interest on securities, dividend and salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (*1*) only on that proportion of the sum which is so chargeable.

Interest or dividend payable to Government or the Reserve Bank.

196. Notwithstanding anything contained in sections 192 to 195, no deduction of tax shall be made on any interest or dividend payable to the Government or to the Reserve Bank of India in respect of any securities or shares owned by it or in which it has full beneficial interest.

Certificate for deduction at lower rate.

197. (*1*) Where, in the case of any income of any person other than a company—

(*a*) income-tax or super-tax is required to be deducted at the time of payment at the rates in force under the provisions of sections 192, 193 and 195,

(*b*) being a non-resident, super-tax is required to be deducted at the time of payment at the rates in force under the provisions of section 194,

the Income-tax Officer is satisfied that the total income or the total world income of the recipient justifies the deduction of income-tax or super-tax at any lower rates or no deduction of income-tax or

super-tax, as the case may be, the Income-tax Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(3) Where the principal officer of a company considers that, by reason of the provisions of sections 84 and 101, no tax will be payable by the recipient on the whole or any portion of the dividend referred to in section 85 and sub-section (2) of section 101, he may, before paying the dividend to the shareholder or issuing any cheque or warrant in respect thereof, make an application to the Income-tax Officer to determine the appropriate proportion of the dividend on which tax is not payable by the recipient under the provisions of sections 84 and 101; and on such determination by the Income-tax Officer, no tax shall be deducted on such proportionate amount.

Tax deducded is income received.

198. All sums deducted in accordance with the provisions of sections 192 to 195 shall, for the purpose of computing the income of an assessee, be deemed to be income received.

Credit for tax deducted.

199. Any deduction made in accordance with the provisions of sections 192 to 195 and paid to the Central Government shall be treated as a payment of income-tax or super-tax, as the case may be, on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under section 203 in the assessment, if any, made for the immediately following assessment year under this Act:

Provided that where such person or owner or shareholder is a person whose income is included under the provisions of section 60, section 61, section 64, section 93 or section 94 in the total income of another person, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, such other person:

Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income.

Duty of person deducting tax.

200. Any person deducting any sum in accordance with the provisions of sections 192 to 195 shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

Consequences of failure to deduct or pay.

201. (*1*) If any such person and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct or after deducting fails to pay the tax as required by or under this Act, he, shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

Provided that no penalty shall be charged under section 221 from such person, principal officer or company unless the Income-tax officer is satisfied that such person or principal officer or company as the case may be, has wilfully failed to deduct and pay the tax.

(*2*) Where the tax has not been paid as aforesaid after it is deducted, it shall be a first charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (*1*).

Deduction only one mode of recovery.

202. The power to levy tax by deduction under sections 192 to 195 shall be without prejudice to any other mode of recovery.

Certificate for tax deducted.

203. Every person deducting income-tax or super-tax in accordance with the provisions of sections 192 to 195 shall, at the time of payment of the sum, or, as the case may be, at the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whom such payment is made, or the cheque or warrant is issued, a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.

Meaning of "person responsible for paying".

204. For the purposes of sections 192 to 203 and section 285 the expression "person responsible for paying" means—

(*i*) in the case of payments of income chargeable under the head "Salaries", other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof;

(*ii*) in the case of payments of income chargeable under the head "Interest on securities", other than payments made by or on behalf of the Central Government or the Government of a State, the local authority or company, including the principal officer thereof;

(*iii*) in the case of payments of any other sum chargeable under the provisions of this Act, not being income chargeable under the head "Interest on securities", the payer himself, or, if the payer is a company, the company itself. including the principal officer thereof.

Bar against direct demand on assessee.

205. Where tax is deductible at the source under sections 192 to 195 the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Person paying salary to furnish prescribed return.

206. (*1*) The prescribed person in the case of every office of the Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, and every private employer shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner, a return in writing showing—

(*a*) the name and, so far as it is known, the address of every person who was receiving on the 31st day of March, or has received or to whom was due during the year ending on that date, from the Government, company, authority, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;

(*b*) the amount of the income so received by or so due to each such person, and the time or times at which the same was paid or due, as the case may be;

(*c*) the amount deducted in respect of income-tax and super-tax from the income of each such person.

(*2*) Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under this section.

C.—Advance payment of tax

Advance tax and income subject to advance tax.

207. (*1*) Tax shall be payable in advance in accordance with the provisions of sections 208 to 219 in the case of income other than income chargeable under the head "Salaries" and "Capital gains."

(*2*) Such income is hereinafter in this Chapter referred to as "income subject to advance tax", and such tax is hereinafter in this Chapter referred to as "advance tax".

Condition of liability to pay advance tax.

208. Advance tax shall be payable in the financial year—

(*a*) where the total income exclusive of capital gains, of the assessee referred to in sub-clause (*i*) of clause (*a*) of section 209 exceeded the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees; or

(*b*) where it is payable by virtue of the provisions of sub-section (*3*) of section 212.

209. The amount of advance tax payable by an assessee in the financial year shall be computed as follows:— **Computation of advance tax.**

(*a*) (*i*) his total income of the latest previous year in respect of which he has been assessed shall first be ascertained;

(*ii*) the amount of capital gains, if any, included in such total income shall be deducted therefrom, and on the balance, income-tax and super-tax shall be calculated at the rates in force in the financial year;

(*iii*) the income-tax and super-tax so calculated shall be reduced by the amount of income-tax and super-tax which would be deductible during the said financial year in accordance with the provisions of sections 192 to 195 on any income, included in the said total income;

(*iv*) the net amount of income-tax and super-tax calculated in accordance with sub-clause (*iii*) shall, subject to the provisions of clauses (*b*) and (*c*), be the advance tax payable.

(*b*) in cases where under the provisions of section 113, the tax payable by the assessee is to be determined with reference to his total world income, the advance tax payable by him shall be calculated in the manner laid down in that section.

(*c*) in cases where an estimate is sent by the assessee under sub-section (*1*) or sub-section (*2*) or sub-section (*3*) of section 212, the total income so estimated shall, for the purposes of calculation of tax under this section, be substituted for the total income referred to in clause (*a*).

Explanation.—If the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than the latest previous year for which the assessee's assessment has been completed, his share in the income of the firm shall, for the purposes of clauses (*a*) and (*b*), be included in his total income on the basis of the said assessment of the firm.

210. (*1*) Where a person has been previously assessed under this Act or under the Indian Income-tax Act, 1922, the Income-tax Officer may, on or after the 1st day of April in the financial year, by order in writing, require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of sections 207, 208 and **209**. **Order by Income-tax Officer.** 11 of 1922.

(2) The notice of demand issued under section 156 in pursuance of such order shall specify the instalments in which the advance tax is payable under section 211.

(3) If, after the making of an order by the Income-tax Officer under this section and before the 15th day of February of the financial year, an assessment of the assessee (or of the registered firm of which he is a partner) is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if more than one, falling after the date of the amended order, the advance tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order:

Provided that in every case where an assessment of the assessee (or of the registered firm of which he is a partner) is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer and the advance tax payable on the basis of such assessment is less than the advance tax determined as payable in accordance with the original order under sub-section (1), the Income-tax Officer shall make an amended order determining the advance tax on the revised basis and refund the amount already paid, if any, in excess of the advance tax so determined.

Instalments of advance tax.

211. (1) Subject to the provisions of this section and of section 212, advance tax shall be payable in equal instalments on the 1st day of June, 1st day of September, 1st day of December and 1st day of March in the financial year:

Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the advance tax on that source of income shall, subject as aforesaid, be payable in three equal instalments on the 1st day of September, the 1st day of December and the 15th day of March, respectively.

(2) If the notice of demand issued under section 156 in pursuance of the order under section 210 is served after any of the dates on which the instalments specified therein are payable, the advance tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand, or in one sum on the 1st day of March if the notice is served after the 1st day of December.

Estimate by assessee.

212. (*1*) If any assessee, who is required to pay advance tax by an order under section 210, estimates at any time before the last instalment is due that his total income exclusive of capital gains, or income subject to advance tax for the period which would be the previous year for the immediately following assessment year, is less than the total income exclusive of capital gains on the basis of which, or the income on which, he is required to pay such tax, as the case may be, and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer—

(*i*) an estimate of the total income exclusive of capital gains for that period;

(*ii*) an estimate of the advance tax payable by him calculated in the manner laid down in section 209 and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in section 211 as have not expired, or in one sum if only the last of such dates has not expired.

(2) The assessee may send a revised estimate of the advance tax payable by him before any one of the dates specified in section 211 and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(3) Any person who has not previously been assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922, shall, before the 1st day of March in each financial year, if his total income exclusive of capital gains of the period which would be the previous year for the immediately following assessment year is likely to exceed the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees, send to the Income-tax Officer—

11 of 1922.

(*i*) an estimate of the total income exclusive of capital gains of the said previous year;

(*ii*) an estimate of the advance tax payable by him calculated in the manner laid down in section 209;

and shall pay such amount as accords with his estimate, on such of the dates specified in section 211 as have not expired, by instalments which may be revised according to sub-section (*2*).

(4) Every estimate under this section shall be sent in the prescribed form and verified in the prescribed manner.

Commission Receipts.

213. Where part of the income subject to advance tax consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's

account before any of the quarterly instalments of advance tax become due, he may defer payment of advance tax on that part of his income to the date on which such income would be normally received or adjusted, and, if he does so, he shall communicate to the Income-tax Officer the date to which such payment is deferred:

Provided that, if the advance tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the advance tax shall be payable with four per cent. simple interest per annum from the date of such receipt or adjustment to the date of payment of the advance tax.

Interest payable by Government.

214. (*1*) The Central Government shall pay simple interest at four per cent. per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment.

(*2*) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made.

Interest payable by assessee.

215. (*1*) Where in any financial year an assessee has paid advance tax under section 212 on the basis of his own estimate, and the advance tax so paid is less than seventy-five per cent. of the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 195) so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of four per cent. per annum from the 1st day of April next following the said financial year up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the said seventy-five per cent.

(*2*) Where provisional assessment is made under section 141—

(*i*) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid; and

(*ii*) thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income subject to advance tax) falls short of the said seventy-five per cent.

(*3*) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(*4*) In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee under this section.

Interest payable by assessee in case of under estimate, etc.

216. Where, on making the regular assessment, the Income-tax Officer finds that any assessee has—

(*a*) under sub-section (*1*) or sub-section (*2*) or sub-section (*3*) of section 212 under-estimated the advance tax payable by him and thereby reduced the amount payable in any of the first three instalments; or

(*b*) under section 213 wrongly deferred the payment of advance tax on a part of his income;

he may direct that the assessee shall pay simple interest at four per cent. per annum—

(*i*) in the case referred to in clause (*a*), for the period during which the payment was deficient, on the difference between the amount paid in each such instalment and the amount which should have been paid, having regard to the aggregate advance tax actually paid during the year; and

(*ii*) in the case referred to in clause (*b*), for the period during which the payment of advance tax was so deferred.

Explanation.—For the purposes of this section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

Interest payable by assessee when no estimate made.

217. (*1*) Where, on making the regular assessment, the Income-tax Officer finds that no payment of advance tax has been made in accordance with the provisions of this Chapter, simple interest at the rate of four per cent. per annum from the first day of April next following the financial year in which the advance tax was payable in accordance with the said sections up to the date of the regular assessment shall be payable by the assessee upon the amount of advance tax which should have been paid.

(2) The provisions of sub-section (3) and sub-section (4) of section 215 shall apply to interest payable under this section as they apply to interest payable under that section.

When assessee deemed to be in default.

218. (1) If any assessee does not pay on the specified date any instalment of advance tax that he is required to pay under section 210 and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (1) or sub-section (2) of section 212 an estimate or a revised estimate of the advance tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments.

(2) If any assessee has sent under sub-section (1) or sub-section (2) or sub-section (3) of section 212 an estimate or a revised estimate of the advance tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in section 211, he shall be deemed to be an assessee in default in respect of such instalment or instalments:

Provided that the assessee shall not, under sub-section (1) or this sub-section, be deemed to be in default in respect of any amount of which the payment is deferred under section 213 until after the date communicated by him to the Income-tax Officer under that section.

Credit for advance tax.

219. Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax in pursuance of this Chapter shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.

D.—Collection and Recovery

When tax payable and when assessee deemed in default.

220. (1) Any amount specified as payable in a notice of demand under section 156 shall be paid within thirty-five days of the service of the notice at the place and to the person mentioned in the notice:

Provided that, where the Income-tax Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty-five days aforesaid is allowed, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty-five days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1),

the assessee shall be liable to pay simple interest at four per cent. per annum from the day commencing after the end of the period mentioned in sub-section (*1*).

(3) Without prejudice to the provisions contained in sub-section (*2*), on an application made by the assessee before the expiry of the due date under sub-section (*1*), the Income-tax Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (*1*) or extended under sub-section (*3*), as the case may be, at the place and to the person mentioned in the said notice, the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (*3*), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 the Income-tax Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

Penalty payable when tax in default.

221. When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (*2*) of section 220, be liable to pay by way of penalty an amount not exceeding the amount of tax in arrears:

Provided that before levying any such penalty the assessee shall be given a reasonable opportunity of being heard.

Certificate to Tax Recovery Officer.

222. (*1*) When an assessee is in default or is deemed to be in default in making a payment of tax, the Income-tax Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—

(*a*) attachment and sale of the assessee's movable property;

(*b*) attachment and sale of the assessee's immovable property;

(*c*) arrest of the assessee and his detention in prison;

(*d*) appointing a receiver for the management of the assessee's movable and immovable properties.

(*2*) The Income-tax Officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

Tax Recovery Officer to whom certificate is to be issued.

223. (*1*) The Income-Officer may forward the certificate referred to in section 222 to—

(*a*) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate; or

(*b*) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate.

(*2*) If the Tax Recovery Officer to whom a certificate is sent by an Income-tax Officer is not able to recover the entire amount by the sale of the property, movable and immovable, but has information that the assessee has property in a district within the jurisdiction of another Tax Recovery Officer, he may send the certificate to such other Tax Recovery Officer or to a Tax Recovery Officer within

whose jurisdiction the assessee resides, and thereupon that Tax Recovery Officer shall proceed to recover the amount under this Chapter as if the certificate was sent to him by the Income-tax Officer.

Validity of certificate, and amendment thereof.

224. (*1*) When the Income-tax Officer sends a certificate to a Tax Recovery Officer under section 222, it shall not be open to the assessee to dispute before the Tax Recovery Officer the correctness of the assessment, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.

(*2*) Notwithstanding the issue of a certificate to a Tax Recovery Officer, the Income-tax Officer shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.

(*3*) The Income-tax Officer shall intimate to the Tax Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (*2*) of this section or any amendment made under sub-section (*4*) of section 225.

Stay of proceedings under certificate and amendment or withdrawal thereof.

225. (*1*) Notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax, the Income-tax Officer may grant time for the payment of the tax, and thereupon the Tax Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(*2*) Where a certificate for the recovery of tax has been issued, the Income-tax Officer shall keep the Tax Recovery Officer informed of any tax paid or time granted for payment, subsequent to the issue of such certificate.

(*3*) Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject matter of further proceeding under this Act, the Income-tax Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(*4*) Where a certificate for the recovery of tax has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Income-tax Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

Other modes of recovery.

226. (*1*) Notwithstanding the issue of a certificate to the Tax Recovery Officer under section 222, the Income-tax Officer may recover the tax by any one or more of the modes provided in this section

(*2*) If any assessee is in receipt of any income chargeable under the head "Salaries", the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs:

5 of 1908.

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any requisition made under this sub-section

(*3*) (*i*) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(*ii*) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(*iii*) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Officer, and in the case of a joint account to all the joint-holders at their last addresses known to the Income-tax Officer.

(*iv*) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(*v*) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date

of the notice shall be void as against any demand contained in the notice.

(*vi*) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*vii*) The Income-tax Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(*viii*) The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(*ix*) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*x*) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

(4) The Income-tax Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Income-tax Officer may, if so authorised by the Commissioner, proceed to recover the tax by distraint and sale of the movable property of the assessee in the manner laid down in the Third Schedule.

Recovery through State Government.

227. If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

Recovery of Indian tax in Pakistan and Pakistan tax in India.

228. (*1*) The Income-tax Officer may forward a certificate under section 222 to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector, and for the purposes of that section, the expression "Tax Recovery Officer" shall include a Collector in Pakistan.

(*2*) Where a Collector in India receives through the Board a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in India, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting his expenses in connection with the recovery proceedings.

(*3*) The provisions of this section shall remain in force only so long as there are in force similar provisions in the law of Pakistan for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in India.

Recovery of penalties, fine, interest and other sums.

229. Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

Tax Clearance Certificate.

230. (*1*) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, no person who is not domiciled in India, or who, even if domiciled in India at the time of his departure, has, in the opinion of an Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940, the Business Profits Tax Act, 1947, the Indian Income-tax Act, 1922, the Wealth Tax Act, 1957, the Expenditure Tax Act, 1957 or the Gift Tax Act, 1958, or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

15 of 1940.
21 of 1947.
11 of 1922.
27 of 1957.
29 of 1957.
18 of 1958.

Provided that in the case of a person not domiciled in India the competent authority may, if it is satisfied that such person intends to return to India, issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer may, having regard to the circumstances of the case, determine.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

(4) The Central Government may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation.—For the purposes of this section, the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

Period for commencing recovery proceedings.

231. Save in accordance with the provisions of section 173 or sub-section (7) of section 220, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which the demand is made, or, in the case of a person who is deemed to be an assessee in default under any provision of this Act, after the expiration of one year from the last day of the financial year in which the Income-tax Officer sends an intimation in writing to such person to the effect that he is deemed to be an assessee in default.

Explanation 1.—The period of one year referred to above shall be reckoned—

(*i*) where an assessee has been treated as not being in default under sub-section (6) of section 220, as long as his appeal is undisposed of, from the last day of the financial year in which the appeal is disposed of;

(*ii*) where recovery proceedings in any case have been stayed by any order of a court, from the last day of the financial year in which the order is withdrawn;

(*iii*) where the date of payment of tax has been extended by an Income-tax authority to another date, from the last day of the financial year in which such other date falls;

(*iv*) where the sum payable is allowed to be paid by instalments, from the last day of the financial year in which the last of such instalments is due.

Explanation 2.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to.

Recovery by suit or under other law not affected.

232. The several modes of recovery specified in this Chapter shall not affect in any way—

(*a*) any other law for the time being in force relating to the recovery of debts due to Government; or

(*b*) the right of the Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the Income-tax Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

E.—Tax payable under provisional assessment

Recovery of tax payable under provisional assessment.

233. For the avoidance of doubt, it is hereby declared that the provisions of section 220, except sub-section (6) thereof, and sections 221 to 229 apply in relation to any tax payable in pursuance of a provisional assessment made under section 141 as if it were a regular assessment made under section 143 or 144.

Tax paid by deduction or advance payment.

234. Tax paid or deemed to have been paid under the provisions of Chapter XVII-B or Chapter XVII-C in respect of any income provisionally assessed under section 141 shall be deemed to have been paid towards the provisional assessment.

CHAPTER XVIII

RELIEF RESPECTING TAX ON DIVIDENDS IN CERTAIN CASES

Relief to shareholders in respect of agricultural income-tax attributable to dividends.

235. Where a company pays to a shareholder any dividend out of its profits and gains which is assessed to agricultural income-tax by any State Government, the shareholder shall be entitled to a reduction from the tax payable by him under this Act, of a sum equal to—

(*a*) that proportion of the agricultural income-tax (including super-tax, if any) paid by the company as the amount of the dividend attributable to the profits of the company assessed to agricultural income-tax bears to its total profits assessed to agricultural income-tax, reduced by the amount of refund, if any, allowed to him by the State Government; or

(*b*) where the shareholder—

(*i*) is not a company, the amount of income-tax (but not super-tax) payable by him under this Act; and

(*ii*) is a company, twenty per cent. on that portion of the dividend which is attributable to the profits of the company assessed to agricultural income-tax;

whichever is less.

Relief to company in respect of dividend paid out of past taxed profits.

236. (*1*) Where in respect of any previous year relevant to the assessment year commencing after the 31st day of March, 1960, an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends within India, pays any dividend wholly or partly out of its profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960, and deducts tax therefrom in accordance with the provisions of Chapter XVII-B, credit shall be given to the company against the income-tax, if any, payable by it on the profits and gains of the previous year during which the dividend is paid, of a sum calculated in accordance with the provisions of sub-section (*2*), and, where the amount of credit so calculated exceeds the income-tax payable by the company as aforesaid, the excess shall be refunded.

(*2*) The amount of income-tax to be given as credit under sub-section (1) shall be a sum equal to ten per cent. of so much of the dividends referred to in sub-section (1) as are paid out of the profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960.

Explanation 1.—For the purposes of this section, the aggregate of the dividends declared by a company in respect of any previous year shall be deemed first to have come out of the distributable income of that previous year and the balance, if any, out of the undistributed

part of the distributable income of one or more previous years immediately preceding that previous year as would be just sufficient to cover the amount of such balance and as has not likewise been taken into account for covering such balance of any other previous year.

Explanation 2.—The expression "distributable income of any previous year" shall mean the total income assessed for that year as reduced by—

(*i*) the amount of tax payable by the company in respect of the said total income;

(*ii*) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

(*iii*) the amount paid to any charitable institution or fund to the extent to which it is exempt from tax under sections 88 and 100; and

(*iv*) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949, 10 of 1949.

and as increased by—

(*a*) any profits and gains or receipts of the company, not included in its total income; and

(*b*) any amount attributable to any allowance made in computing the profits and gains of the company for purposes of assessment, which the company has not taken into account in its profit and loss account.

CHAPTER XIX

REFUNDS

Refunds.

237. If any person satisfies the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

Person entitled to claim refund in certain special cases.

238. (*1*) Where the income of one person is included under any provision of this Act in the total income of any other person, the latter alone shall be entitled to a refund under this Chapter in respect of such income.

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

Form of claim for refund and limitation.

239. (*1*) Every claim for refund under this Chapter shall be made in the prescribed form and verified in the prescribed manner.

(*2*) No such claim shall be allowed, unless it is made within four years from the last day of the assessment year in which the income in respect of which the claim is made was assessable.

Refund on appeal, etc.

240. Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Income-tax Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf.

Power to withhold refund in certain cases.

241. Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Income-tax Officer is of the opinion that the grant of the refund may adversely affect the revenue, the Income-tax Officer may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.

Correctness of assessment not to be questioned.

242. In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

Interest on delayed refunds.

243. (*1*) If within a period of six months from the date on which a claim for refund is made under this Chapter, the Ineome-tax Officer does not grant the refund, the Central Government shall pay the claimant simple interest at four per cent. per annum on the amount directed to be refunded from the date immediately following the expiry of the period of six months aforesaid to the date of the order granting the refund.

Explanation.—If the delay in granting the refund within the period of six months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner whose decision shall be final.

Interest on refund where no claim is needed.

244. (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax Officer does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at four per cent. per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of six months from the date of the order referred to in section 241 to the date the refund is granted.

Set off of refunds against tax remaining payable.

245. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner as the case may be may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

CHAPTER XX

APPEALS AND REVISION

A.—Appeals to the Appellate Assistant Commissioner

Appealable orders.

246. Any assessee aggrieved by any of the following orders of an Income-tax Officer may appeal to the Appellate Assistant Commissioner against such order—

(a) an order against the assessee, being a company, under section 104;

(b) an order imposing a fine under sub-section (2) of section 131;

(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(*d*) an order under section 146 refusing to reopen an assessment made under section 144;

(*e*) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(*f*) an order made under section 163 treating the assessee as the agent of a non-resident;

(*g*) an order under sub-section (*2*) or sub-section (*3*) of section 170;

(*h*) an order under section 171;

(*i*) an order refusing to register a firm under clause (*b*) of sub-section (*1*) or under sub-section (*5*) of section 185;

(*j*) an order cancelling the registration of a firm under sub-section (*1*) or under sub-section (*2*) of section 186;

(*k*) an order under section 201;

(*l*) an order under section 237;

(*m*) an order imposing a penalty under–

(*i*) section 221, or

(*ii*) section 270, or

(*iii*) section 271, or

(*iv*) section 272, or

(*v*) section 273:

Provided that no appeal shall lie against an order under section 221 unless the tax has been paid.

Explanation.—"Status" means the category under which the assessee is assessed with reference to the Finance Act applicable to the case, as "individual", "Hindu undivided family" and so on.

Appeal by partner.

247. Where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but he cannot agitate such matters in any appeal preferred against an order of assessment determining his own total income or loss.

Appeal by person denying liability to deduct tax.

248. Any person having in accordance with the provisions of section 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest or dividend, who denies his liability to make such deduction, may appeal to the Appellate Assistant Commissioner to be declared not liable to make such deduction.

Form of appeal and limitation.

249. (*1*) Every appeal under this Chapter shall be in the prescribed form and shall be verified in the prescribed manner.

(*2*) The appeal shall be presented within thirty days of the following date, that is to say,—

(*a*) where the appeal relates to any tax deducted under sub-section (*1*) of section 195, the date of payment of the tax, or

(*b*) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty, or

(*c*) in any other case, the date on which intimation of the order sought to be appealed against is served.

(*3*) The Appellate Assistant Commissioner may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

Procedure in appeal.

250. (*1*) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Income-tax Officer against whose order the appeal is preferred.

(*2*) The following shall have the right to be heard at the hearing of the appeal—

(*a*) the appellant, either in person or by an authorised representative;

(*b*) the Income-tax Officer, either in person or by a representative.

(*3*) The Appellate Assistant Commissioner shall have the power to adjourn the hearing of the appeal from time to time.

(*4*) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Income-tax Officer to make further inquiry and report the result of the same to the Appellate Assistant Commissioner.

(5) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision, and the relief, if any, to which the appellant is entitled.

(7) On the disposal of the appeal, the Appellate Assistant Commissioner shall communicate the order passed by him to the assessee and to the Commissioner.

Powers of the Appellate Assistant Commissioner.

251. (*1*) In disposing of an appeal, the Appellate Assistant Commissioner shall have the following powers—

(*a*) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner and after making such further inquiry as may be necessary, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(*b*) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(*c*) in any other case, he may pass such orders in the appeal as he thinks fit.

(*2*) The Appellate Assistant Commissioner shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Appellate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner by the appellant.

Appellate Tribunal

B.—Appeals to the Appellate Tribunal

252. (*1*) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(*2*) A judicial member shall be a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade III), for at least three years or who has been in practice as an advocate for at least ten years; and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949, or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has served as an Assistant Commissioner of Income-tax for at least three years.

38 of 1949.

(*3*) The Central Government shall ordinarily appoint a judicial member of the Appellate Tribunal to be the President thereof.

Appeals to the Appellate Tribunal.

253. (*1*) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(*a*) an order passed by an Appellate Assistant Commissioner under sub-section (*2*) of section 131, section 250, section 271, or sub-section (*2*) of section 275;

(*b*) an order passed by an Inspecting Assistant Commissioner under sub-section (*2*) of section 274 or sub-section (*1*) of section 275; or

(*c*) an order passed by a Commissioner under section 263 or sub-section (*2*) of section 275.

(*2*) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 250, direct the Income-tax Officer to appeal to the Appellate Tribunal against the order.

(*3*) Every appeal under sub-section (*1*) or sub-section (*2*) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

(*4*) The Income-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section

(1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Appellate Assistant Commissioner, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and, shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of rupees one hundred.

Orders of Appellate Tribunal.

254. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the amount of tax determined or penalty imposed:

Provided that no order enhancing the amount of tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Income-tax Officer:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.

(4) Save as provided in section 256, orders passed by the Appellate Tribunal on appeal shall be final.

Procedure of Appellate Tribunal.

255. (*1*) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(*2*) Subject to the provisions contained in sub-section (*3*), a Bench shall consist of one judicial member and one accountant member.

(*3*) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax Officer in the case does not exceed twenty-five thousand rupees, and the President may, for the disposal of any particular case, constitute a special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(*4*) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(*5*) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(*6*) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code. 45 of 1860.

C.—Reference to High Court

Statement of case to the High Court.

256. (*1*) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of

rupees one hundred, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(3) Where in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

Statement of cases to Supreme Court in certain cases.

257. If, on an application made under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law arising therefrom, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

Power of High Court or Supreme Court to require statement to be amended.

258. If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

Case before High Court to be heard by not less than two judges.

259. (*1*) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(*2*) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Decision of High Court or Supreme Court on the case stated

260. (*1*) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(*2*) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

D.—Appeals to the Supreme Court

Appeal to Suprem Court.

261. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 256 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

Hearing before Supreme Court.

262. (*1*) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court: 5 of 1908.

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (*1*) of section 260 or section 265.

(*2*) The costs of the appeal shall be in the discretion of the Supreme Court.

(*3*) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

E.—Revision by the Commissioner

Revision of orders prejudicial to revenue.

263. (*1*) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(*2*) No order shall be made under sub-section (*1*)—

(*a*) to revise an order of reassessment made under section 147, or

(*b*) after the expiry of two years from the date of the order sought to be revised.

(*3*) Notwithstanding anything contained in sub-section (*2*), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (*2*), the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which the assessment proceeding is stayed by an order or injunction of any court shall be excluded.

Revision of other orders.

264. (*1*) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(*2*) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(*3*) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases—

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Appellate Assistant Commissioner; or

(c) where the order has been made the subject of an appeal to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2.—For the purposes of this section, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.

F.—General

Tax to be paid notwithstanding reference, etc.

265. Notwithstanding that a reference has been made to the High Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

Execution for costs awarded by Supreme Court.

266. The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

Amendment of assessment on appeal.

267. Where as the result of an appeal under section 246 or section 253, any change is made in the assessment of a firm or body of individuals or an association of persons or a new assessment of a firm or a body of individuals or an association of persons is ordered to be made, the Appellate Assistant Commissioner or the Appellate

Tribunal, as the case may be, shall pass an order authorising the Income-tax Officer either to amend the assessment made on any partner of the firm or any member of the body or association or make a fresh assessment on any partner of the firm or on any member of the body or association.

Exclusion of time taken for copy.

268. In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

Definition of "High Court".

269. In this Chapter,—

"High Court" means,—

(*i*) in relation to any State, the High Court for that State;

(*ii*) in relation to the Union territories of Delhi and Himachal Pradesh, the High Court of Punjab;

(*iii*) in relation to the Union territories of Manipur and Tripura, the High Court of Assam;

(*iv*) in relation to the Union territory of the Andaman and Nicobar islands, the High Court at Calcutta; and

(*v*) in relation to the Union territory of the Laccadive, Minicoy and Amindivi islands, the High Court of Kerala.

CHAPTER XXI

PENALTIES IMPOSABLE

Failure to furnish information regarding securities, etc.

270. If any person without reasonable excuse fails to comply with a notice issued under sub-section (*6*) of section 94, the Income-tax Officer may direct that such person shall pay by way of penalty a sum not exceeding five hundred rupees and by way of further penalty a like amount for every day after the infliction of such penalty during which the failure continues.

Failure to furnish returns, comply with notices, concealment of income, etc.

271. (*1*) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish under sub-section (*1*) of section 139 or by notice given under sub-

section (2) of section 139 or section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 139 or by such notice, as the case may be, or

(b) has without reasonable cause failed to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143, or

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he or it may direct that such person shall pay by way of penalty,—

(i) in the cases referred to in clause (a), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent. of the tax;

(ii) in the cases referred to in clause (b), in addition to any tax payable by him, a sum which shall not be less than ten per cent. but which shall not exceed fifty per cent. of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income;

(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than twenty per cent. but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income.

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then, notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.

(3) Notwithstanding anything contained in this section,—

(a) no penalty for failure to furnish the return of his total income under sub-section (1) of section 139 shall be imposed under sub-section (1) on an assessee whose total income does not exceed the maximum amount not chargeable to tax in his case by one thousand five hundred rupees;

(b) where a person has failed to comply with a notice under sub-section (2) of section 139 or section 148 and proves that he has no income liable to tax, the penalty imposable under sub-section (1) shall not exceed twenty-five rupees;

(c) no penalty shall be imposed under sub-section (1) upon any person assessable under clause (i) of sub-section (1) of section 160, read with section 161, as the agent of a non-resident for failure to furnish the return under sub-section (1) of section 139.

(4) If the Income-tax Officer, or the Appellate Assistant Commissioner, or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he or it may direct that such partner shall, in addition to the tax, if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner has been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

Failure to give notice of discontinuance.

272. Where any person fails to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty which shall not be less than ten per cent. of the tax but which shall not exceed the amount of tax subsequently assessed on him in respect of any income of the business or profession up to the date of its discontinuance.

False estimate of or failure to pay advance tax.

273. If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—

(a) has furnished under section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of sub-section (3) of section 212,

he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum—

(*i*) which, in the case referred to in clause (*a*), shall not be less than ten per cent. but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of—

(*1*) seventy-five per cent. of the tax determined on regular assessment, as modified under the provisions of section 215, or

(*2*) where a notice under section 210 was issued to the assessee, the amount payable thereunder,

whichever is less; and

(*ii*) which, in the case referred to in clause (*b*), shall not be less than ten per cent. but shall not exceed one and a half times the amount on which interest is payable under section 215.

Procedure.

274. (*1*) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(*2*) Notwithstanding anything contained in clause (*iii*) of sub-section (*1*) of section 271, if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.

(*3*) An Appellate Assistant Commissioner or the Appellate Tribunal, on making an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income-tax Officer.

Penalty for abetment etc. of false returns.

275. (*1*) If the Income-tax Officer, in the course of any proceedings under this Act, is satisfied that any person has in any manner abetted or induced another person to make or deliver an account, statement or declaration relating to any income, profits or gains chargeable to tax, which is false and which he either knows to be false or does not believe to be true, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who may direct that such person shall, without prejudice to any other action that may be taken against him under any other provision of this Act or any other

law for the time being in force, pay by way of penalty a sum which shall not be less than five hundred rupees but which may extend to five thousand rupees.

(2) If the Appellate Assistant Commissioner, the Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person has in any manner abetted or induced another person to make or deliver an account, statement or declaration relating to any income, profits or gains chargeable to tax which is false and which he either knows to be false or does not believe to be true, he or it may direct that such person shall, without prejudice to any other action that may be taken against him under any other provision of this Act or under any other law for the time being in force, pay by way of penalty a sum which shall not be less than five hundred rupees but which may extend to five thousand rupees.

(3) No order under this section shall be passed unless the person on whom the penalty is sought to be imposed has been given a reasonable opportunity of being heard.

Bar of limitation for imposing penalties.

276. No order imposing a penalty under this Chapter shall be passed after the expiration of two years from the date of the completion of the proceedings in the course of which the proceedings for the imposition of penalty have been commenced.

CHAPTER XXII

OFFENCES AND PROSECUTIONS

Failure to make payments or deliver returns or statements or allow inspection.

277. If a person fails without reasonable cause or excuse—

(*a*) to grant inspection or allow copies to be taken in accordance with the provisions of section 134;

(*b*) to furnish in due time any of the returns or statements mentioned in section 133, section 139, section 206, section 285 or section 286;

(*c*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*1*) of section 142, such accounts and documents as are referred to in the notice;

(*d*) to deduct and pay tax as required by the provisions of Chapter XVII-B or under sub-section (*2*) of section 226; or

(*e*) to furnish a certificate required by section 203,

he shall be punishable with fine which may extend to ten rupees for every day during which the default continues.

False statement in declaration.

278. If a person makes a statement in any verification under this Act or under any rule made thereunder, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Prosecution to be at instance of Commissioner.

279. (*1*) A person shall not be proceeded against for an offence under section 277 or section 278 except at the instance of the Commissioner.

(*2*) The Commissioner may either before or after the institution of proceedings compound any such offence.

Disclosure of particulars by public servants.

280. (*1*) If a public servant discloses any particulars, the disclosure of which is prohibited by section 137, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(*2*) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER XXIII

MISCELLANEOUS

Transfers to defraud revenue void.

281. Where, during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding:

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.

Service of notice—General.

282. (*1*) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908. 5 of 1908.

(*2*) Any such notice or requisition may be addressed—

(*a*) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(*b*) in the case of a local authority or company, to the principal officer thereof;

(*c*) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(*d*) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Service of notice when family is disrupted or firm, etc. is dissolved.

283. (*1*) After a finding of total partition has been recorded by the Income-tax Officer under section 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.

(*2*) Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

Service of notice in the case of discontinued business.

284. Where an assessment is to be made under section 176, the Income-tax Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.

Information by persons responsible for paying interest.

285. The person responsible for paying any interest, not being "Interest on securities", shall, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer having jurisdiction to assess him, a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount, not being less than four hundred rupees, as may be prescribed in this behalf, together with the amount paid to each such person.

Information by companies respecting shareholders to whom dividends have been paid.

286. The principal officer of every company which is an Indian company or a company which has made such effective arrangements as may be prescribed for the declaration and payment of dividends in India shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses,

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as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each shareholder.

Publication of information respecting penalties in certain cases.

287. (*1*) The Central Government shall cause to be published, by notification in the Official Gazette, the names and such other particulars as may be relevant, of—

(*a*) persons on each of whom a penalty amounting to not less than five thousand rupees or such lesser amount as may be fixed by the Central Government, by notification in the Official Gazette, has been imposed under clause (c) of sub-section (*1*) of section 271, and

(*b*) persons who have been convicted as a result of any proceedings under section 278 or under any provision of the Indian Penal Code for any offence connected with any proceedings under this Act.

45 of 1960

(*2*) If in the interests of revenue the Central Government considers it necessary so to do, it may also cause to be published, by notification in the Official Gazette, the names and such other particulars as may be relevant of—

(*a*) persons on each of whom a penalty has been imposed under clause (*a*) or clause (*b*) or sub-section (*1*) of section 271; or

(*b*) persons on each of whom a penalty of an amount not exceeding the amount referred to in clause (*a*) of sub-section (*1*) has been imposed under clause (c) of sub-section (*1*) of section 271; or

(c) persons who have been convicted as a result of any proceedings under any provision of this Act other than section 278.

(*3*) No publication under this section shall be made—

(*i*) in the case of an assessee mentioned in clause (*a*) of sub-section (*1*) or in clause (*a*) or clause (*b*) of sub-section (*2*) who has presented an appeal under section 246 against the order imposing the penalty, until the appeal is disposed of by the Appellate Assistant Commissioner;

(*ii*) in the case of an assessee mentioned in clause (*b*) of sub-section (*1*) or clause (*c*) of sub-section (*2*), until the time for appealing has expired without an appeal having been presented, or the appeal, if presented, has been disposed of.

(*4*) Notwithstanding anything contained in his section, the Central Government may refrain from publishing the name of any

person if it is satisfied that in the interests of revenue it is necessary so to do, and where the Central Government refrains from publishing the name of any person, the reason for not publishing the name shall be recorded in writing.

(5) Every notification issued under this section shall be laid before Parliament as soon as may be after it is made.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in sections 137 and 280.

(7) The provisions of this section shall have effect in relation to penalties imposed after the 1st day of April, 1960, under the Indian Income-tax Act, 1922, or to proceedings for any offence initiated after the said date under that Act as they have effect in relation to penalties imposed or proceedings initiated under this Act with the modification that references in this section to any provision of this Act shall be construed as references to the corresponding provision of that Act.

11 of 1922.

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

Appearance by authorised representative.

288. (*1*) Any assessee who is entitled or required to attend before any Income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.

(*2*) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—

(*i*) a person related to the assessee in any manner, or a person regularly employed by the assessee; or

(*ii*) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or

(*iii*) any legal practitioner who is entitled to practise in any civil court in India; or

(*iv*) an accountant; or

(*v*) any other person who, immediately before the commencement of this Act, was an Income-tax practitioner within the meaning of clause (*iv*) of sub-section (*2*) of section 61 of the Indian Income-tax Act, 1922, and was actually practising as such.

11 of 1922.

...*Explanation.*—In this section, "accountant" means a chartered accountant within the meaning of the Chatered Accountants Act, 1949, and includes, in relation to any State, any person who by virtue of the provisions of sub-section (*2*) of section 236 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that State.

39 of 1949.

1 of 1956

(*3*) Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an Income-tax authority, not below the rank of Assistant Commissioner, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act from the date of his first employment as such, he shall not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be.

(*4*) No person—

(*a*) who has been dismissed from Government service after the 1st day of April, 1938; or

(*b*) who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act either in respect of his own assessment or in respect of the assessment of another person: or

(*c*) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (*1*), for all times in the case of a person referred to in sub-clause (*a*), for such times as the Commissioner may by order determine in the case of a person referred to in sub-clause (*b*), and for the period during which the insolvency continues in the case of a person referred to in sub-clause (*c*).

(*5*) If any person—

(*a*) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practise as a legal practitioner or accountant, as the case may be;

(*b*) who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent an assessee under sub-section (*1*).

(*6*) Any order or direction under clause (*b*) of sub-section (*4*) or clause (*b*) of sub-section (*5*) shall be subject to the following conditions, namely,—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

(7) A person disqualified to represent an assessee by virtue of the provisions of sub-section (3) of section 61 of the Indian Income-tax Act, 1922 shall be disqualified to represent an assessee under sub-section (1).

XI of 1922.

Receipt to be given.

289. A receipt shall be given for any money paid or recovered under this Act.

Idemnity.

290. Every person deducting, retaining, or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention, or payment thereof.

Power to tender immunity from prosecution.

291. (1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the concealment of income or to the evasion of payment of tax on income, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income.

45 of 1860.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn, and any such

person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

Cognisance of offences.

292. No court inferior to that of a presidency magistrate or magistrate of the first class shall try any offence under this Act.

Bar of suits in civil courts.

293. No suit shall be brought in any civil court to set aside or modify any assessment order made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

Act to have effect pending legislative provision for charge of tax.

294. If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of income-tax or super-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

Power to make rules.

295. (*1*) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters—

(*a*) the ascertainment and determination of any class of income;

(*b*) the manner in which and the procedure by which the income shall be arrived at in the case of—

(*i*) income derived in part from agriculture and in part from business;

(*ii*) persons residing outside India;

(*c*) the determination of the value of any perquisite chargeable to tax under this Act in such manner and on such basis as appears to the Board to be proper and reasonable;

(*d*) the percentage on the written down value which may be allowed as depreciation in respect of buildings, machinery, plant or furniture;

(*e*) the authority to be prescribed for any of the purposes of this Act;

(*f*) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double

taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Act;

(*g*) the form and manner in which any application, claim, return or information may be made or furnished and the fees that may be levied in respect of any application or claim;

(*h*) the manner in which any document required to be filed under this Act may be verified;

(*i*) the procedure to be followed on applications for refunds;

(*j*) the regulation of any matter for which provision is made in section 230;

(*k*) the form and manner in which any appeal or cross objection may be filed under this Act and the fee payable in respect thereof;

(*l*) the maintenance of a register of persons other than legal practitioners or accountants as defined in sub-section (*2*) of section 288 practising before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (*5*) of that section;

(*m*) the issue of certificate verifying the payment of tax by assessees;

(*n*) any other matter which by this Act is to be, or may be, prescribed;

(*3*) In cases coming under clause (*b*) of sub-section (*2*), where the income liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable, the rules made under this section may—

(*a*) prescribe methods by which an estimate of such income may be made; and

(*b*) in cases coming under sub-clause (*i*) of clause (*b*) of sub-section (*2*) specify the proportion of income which shall be deemed to be income liable to tax; and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

Rules to be placed before Parliament.

296. The Central Government shall cause every rule made under this Act to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, that rule shall thereafter have effect, only

in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeals and savings.

297. (*1*) The Indian Income-tax Act, 1922, is hereby repealed. 11 of 1922

(*2*) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (hereinafter referred to as the repealed Act),— 11 of 1922

(*a*) where a return of income has been filed before the commencement of this Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed;

(*b*) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under section 34 of the repealed Act by any person for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act:

(*c*) any proceeding pending on the commencement of this Act before any income-tax authority, the appellate tribunal or any court, by way of appeal, reference or revision, shall be continued and disposed of as if this Act had not been passed;

(*d*) where in respect of any assessment year after the year ending on the 31st day of March, 1940,—

(*i*) a notice under section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(*ii*) any income chargeable to tax had escaped assessment within the meaning of that expression in section 147 and no proceedings under section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under section 148 may, subject to the provisions contained in section 149, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

(*e*) section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962, or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

(*f*) any proceeding for the imposition of a penalty in respect of any assessment completed on or before the 1st day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(*g*) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(*h*) any election or declaration made or option exercised by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provision of this Act;

(*i*) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement, in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply;

(*j*) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;

(*k*) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;

(*l*) any notification issued under sub-section (*1*) of section 60 of the repealed Act and in force immediately before the commencement of this Act shall, to the extent to which provision has not been made under this Act, continue in force until rescinded by the Central Government;

(*m*) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in

this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority.

Power to remove difficulties.

298. (*1*) If any difficulty arises in giving effect to the provisions of this Act the Central Government may, by general or special order, do anything not inconsistent with such provision which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(*2*) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which the repealed Act shall apply in relation to the assessments for the assessment year ending on the 31st day of March, 1962, or any earlier year.

THE FIRST SCHEDULE

INSURANCE BUSINESS

(*See* section 44)

A.—Life insurance business

Profits of life insurance business to be computed separately.

1. In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.

Computation of profits of life insurance business.

2. (*1*) The profits and gains of life insurance business shall be taken to be the greater of the following—

(*a*) the gross external incomings of the previous year from that business, less the management expenses of that year;

4 of 1938.

(*b*) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938, in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure or allowance which is not deductible under the provisions of sections 30 to 43 in computing income chargeable under the head "Profits and gains of business or profession".

(*2*) The amount to be allowed as management expenses under sub-rule (*1*) shall not exceed the aggregate of the following:—

(*a*) $7\frac{1}{2}$ per cent. of the premiums received during the previous year in respect of single premium life insurance policies;

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums payable is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year $7\frac{1}{2}$ per cent. of such first year's premiums received during the previous year;

(*c*) 90 per cent. of the first year's premiums received during the previous year in respect of all other life insurance policies;.

(*d*) in respect of all renewal premiums received during the previous year, an amount calculated at such percentage thereof as is permissible under sub-section (2) of section 40B of the Insurance Act, 1938, as reduced by any expenditure or allowance which is not deductible under sections 30 to 43 in computing income chargeable under the head "Profits and gains of business or profession". 4 of 1938.

Deductions. 3. In computing the surplus for the purpose of rule 2,—

(*a*) four-fifths of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction:

Provided that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders, that proportion of such amount (one-half or four-fifths, as the case may be) if it has been previously allowed as a deduction under this Act or under the Indian Income-tax Act, 1922, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved; 11 of 1922.

(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of investments shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Controller of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of investments so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation or to the amount to be included in the surplus in respect of appreciation of such investments as shall increase the surplus for the purposes of these provisions to a figure which is fair and just;

(*c*) interest received during the inter-valuation period in respect of any securities of the Central Government which have been issued or declared to be income-tax free, shall not be excluded, but no income-tax shall be payable on the annual average of the amount of such interest.

Adjustment of tax paid by deduction at source.

4. Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the income-tax payable for that year, credit shall not be given in accordance with section 199 for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

B.—Other insurance business

Computation of profits and gains of other insurance business.

5. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance, subject to the following adjustments:—

4 of 1938.

(*a*) subject to the other provisions of this rule, any expenditure or allowance which is not admissible under the provisions of sections 30 to 43 in computing the profits and gains of a business shall be added back;

(*b*) any amount either written off or reserved in the accounts to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts on account of appreciation of or gains on the realisation of investments shall be treated as part of the profits and gains:

Provided that the Income-tax Officer is satisfied about the reasonableness of the amount written off or reserved in the accounts, as the case may be, to meet depreciation of or loss on the realisation of securities or other assets.

(*c*) such amount as may be allowed by way of reserve for unexpired risks as may be prescribed in this behalf.

C.—Other provisions

Profits and gains of non-resident person.

6. (*1*) The profits and gains of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.

(*2*) For the purposes of this rule, the world income in relation to life insurance business of a person not resident in India shall be

computed in the manner laid down in this Act for the computation of the profits and gains of life insurance business carried on in India.

Interpretation.

7. *(1)* For the purposes of these rules—

(i) "gross external incomings" means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund), and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of investments:

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of section 44 would have been assessable under the head "Income from house property", shall be computed in the manner applicable to income chargeable under that head, and that there shall be allowed from such gross incomings such deductions as are permissible in respect of income chargeable under that head;

(ii) "investments", includes securities, stocks and shares;

(iii) "management expenses" means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance, in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of investments, and any expenditure other than expenditure or allowance which may under the provisions of sections 30 to 43 be allowed for in computing the profits and gains of a business, are not management expenses for the purposes of these rules;

(iv) "life insurance business" means life insurance business as defined in clause *(11)* of section 2 of the Insurance Act, 1938; 4 of 1938.

(v) "rule" means a rule contained in this Schedule.

(2) References in these rules to the Insurance Act, 1938, or any provision thereof, shall, in relation to the Life Insurance Corporation of India, be construed as references to that Act or provision as read with section 43 of the Life Insurance Corporation Act, 1956.

4 of 1938.

31 of 1956.

THE SECOND SCHEDULE

PROCEDURE FOR RECOVERY OF TAX

[*See* section 222]

PART I

General provisions

Definitions.

1. In this Schedule, unless the context otherwise requires,—

(*a*) "certificate" means a certificate received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule;

(*b*) "defaulter" means the assessee mentioned in the certificate;

(*c*) "execution", in relation to a certificate, means recovery of arrears in pursuance of the certificate;

(*d*) "movable property" includes growing crops;

(*e*) "officer" means an officer authorised to make an attachment or sale under this Schedule;

(*f*) "rule" means a rule contained in this Schedule; and

(*g*) "share in a Corporation" includes stock, debenture-stock, debentures or bonds.

Issue of Notice.

2. When a certificate has been received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

When certificate may be executed.

3. No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed

or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

Mode of recovery.

4. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes:—

(*a*) by attachment and sale of the defaulter's movable property;

(*b*) by attachment and sale of the defaulter's immovable property;

(*c*) by arrest of the defaulter and his detention in prison;

(*d*) by appointing a receiver for the management of the defaulter's movable and immovable properties.

Interest, costs and charges recoverable.

5. There shall be recoverable, in the proceedings in execution of every certificate,—

(*a*) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (*2*) of section 220, and

(*b*) all charges incurred in respect of—

(*i*) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(*ii*) all other proceedings taken for realising the arrears.

Purchaser's title.

6. (*1*) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(*2*) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.

7. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf or some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Disposal of proceeds of execution.

8. (1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner:—

(a) there shall first be paid to the Income-tax Officer the costs incurred by him;

(b) there shall, in the next place, be paid to the Income-tax Officer the amount due under the certificate in execution of which the assets were realized;

(c) if there remains a balance after these sums have been paid, there shall be paid to the Income-tax Officer therefrom any other amount recoverable under the procedure provided by this Act which may be due upon the date upon which the assets were realised; and

(d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the Income-tax Officer to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.

General bar to jurisdiction of civil courts, save where fraud alleged.

9. Except as otherwise expressly provided in this Act, every question arising between the Income-tax Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises:

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

Property exempt from attachment.

10. (*1*) All such property as is by the Code of Civil Procedure 1908, exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule. 5 of 1908

(*2*) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

Investigation by Tax Recovery Officer.

11. (*1*) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(*2*) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(*3*) The claimant or objector must adduce evidence to show that—

(*a*) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(*b*) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

(*4*) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

Removal of attachment on satisfaction or cancellation of certificate.

12. Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

Officer entitled to attach and sell.

13. The attachment and sale of movable property and the attachment and sale of immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct.

Defaulting purchaser answerable for loss on resale.

14. Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the Income-tax Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

Adjournment or stoppage of sale.

15. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

Private alienation to be void in certain cases.

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Prohibition against bidding or purchase by Officer.

17. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Prohibition against sale on holidays.

18. No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

Assistance by police.

19. Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

PART II

Attachment and sale of movable property

Attachment

Warrant.

20. Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised.

Service of copy of warrant.

21. The officer shall cause a copy of the warrant to be served on the defaulter.

Attachment.

22. If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

Property in defaulters' possession.

23. Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof:

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

Agricultural produce.

24. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

(*a*) where such produce is growing crop,—on the land on which such crop has grown, or

(*b*) where such produce has been cut or gathered,—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

Provisions as to agricultural produce under attachment.

25. (*1*) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and the Income-tax Officer shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangements.

(*2*) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and

the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Debts and shares etc.

26. (1) In the case of—

(a) a debt not secured by a negotiable instrument,

(b) a share in a corporation, or

(c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;

(ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such

payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of decree.

27. (*1*) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

(*i*) the Tax Recovery Officer cancels the notice, or

(*ii*) the Income-tax Officer or the defaulter applies to the court receiving such notice to execute the decree.

(*2*) Where a civil court receives an application under clause (*ii*) of sub-rule (*1*), it shall, on the application of the Income-tax Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate. 5 of 1908

(*3*) The Income-tax Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Share in movable property.

28. Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

Salary of Government servants.

29. Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908 and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary. 5 of 1908.

Attachment of negotiable instruments.

30. Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer and held subject to his orders.

Attachment of property in custody of court or public officer.

31. Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Income-tax

Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Attachment of partnership property.

32. (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

Inventory.

33. In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

Attachment not to be excessive.

34. The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

Seizure between sun-e and sun set.

35. Attachment by seizure shall be made after sun-rise and before sun-set and not otherwise.

Power to break open doors etc.

36. The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

Sale

Sale.

37. The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

Issue of proclamation.

38. When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

Proclamation how made.

39. (1) Such proclamation shall be made by beat of drum or other customary mode,—

(a) in the case of property attached by actual seizure—

(i) in the village in which the property was seized, or, if the property was seized in a town or city, there, in the locality in which it was seized; and

(ii) at such other places as the Tax Recovery Officer may direct;

(b) in the case of property attached otherwise than by actual seizure in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Sale after fifteen days.

40. Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale-proclamation was affixed in the office of the Tax Recovery Officer.

Sale of agricultural produce.

41. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

(a) if such produce is a growing crop—on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered—at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

42. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (*e.g.* as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

Sale to be by auction.

43. The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

Sale by public auction.

44. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale, but any person injured may sue

45. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for

compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Negotiable instruments and shares incorporation.

46. Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Order for payment of coin or currency notes to the Income-tax Officer.

47. Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the Income-tax Officer.

PART III

Attachment and sale of immovable property

Attachment

Attachment.

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment.

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment.

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

Attachment to relate back from the date of service of notice.

51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

Sale

Sale and proclamation of sale.

52. *(1)* The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of proclamation.

53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

(*a*) the property to be sold;

(*b*) the revenue, if any, assessed upon the property or any part thereof;

(*c*) the amount for the recovery of which the sale is ordered; and

(*d*) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation.

54. (*1*) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(*2*) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(*3*) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax-Recovery Officer, otherwise be given.

Time of sale.

55. No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

Sale to be by auction.

56. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

Deposit by purchaser and resale in default.

57. (*1*) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent. on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

(*2*) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure default of payment.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Authority to bid.

59. All persons bidding at the sale shall be required to declare if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

Application to set aside sale of immovable property on deposit.

60. (*1*) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—

(*a*) for payment to the Income-tax Officer, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of six per cent. per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(*b*) for payment to the purchaser, as penalty, a sum equal to five per cent. of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

61. Where immovable property has been sold in execution of a certificate, the Income-tax Officer, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—

(*a*) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained

substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

Setting aside sale where defaulter has no saleable interest.

62. At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

Confirmation of sale.

63. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase-money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

Return of purchase money in certain cases.

64. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

Sale certificate.

65. (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

Postponement of sale to enable defaulter to raise amount due under certificate.

66. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

67. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale. Fresh proclamation before re-sale.

68. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer. Bid of co-sharer to have preference.

PART IV

Appointment of receiver

69. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business. Appointment of receiver for business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

70. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property. Appointment of receiver for immovable property.

71. (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof. Powers of receiver.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Withdrawal of management.

72. The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

Arrest and detention of the defaulter

Notice to show cause.

73. (*1*) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer for reasons recorded in writing, is satisfied—

(*a*) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or

(*b*) that the defaulter has, or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(*2*) Notwithstanding anything contained in sub-rule (*1*), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(*3*) Where appearance is not made in obedience to a notice issued and served under sub-rule (*1*), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(*4*) Every person arrested in pursuance of a warrant of arrest under sub-rule (*2*) or sub-rule (*3*) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Hearing.

74. When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, the Tax Recovery Officer shall proceed to hear the Income-tax Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

Custody pending hearing.

75. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

Order of detention.

76. (*1*) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(*2*) When the Tax Recovery Officer does not make an order of detention under sub-rule (*1*) he shall, if the defaulter is under arrest, direct his release.

Detention in and release from prison.

77. (*1*) Every person detained in the civil prison in execution of a certificate may be so detained,—

(*a*) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees—for a period of six months, and

(*b*) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

(*i*) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

(*ii*) on the request of the Income-tax Officer who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79:

Provided that where he is to be released on the request of the Income-tax Officer, he shall not so be released without the order of the Tax Recovery Officer.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

Release.

78. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Release on ground of illness.

79. (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Entry into dwelling house.

80. For the purpose of making an arrest under this Schedule—

(a) no dwelling house shall be entered after sun-set and before sun-rise;

(b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access

to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

(c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition against arrest of women or minors etc.

81. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

(a) a woman, or

(b) any person who, in his opinion, is a minor or of unsound mind.

PART VI

Miscellaneous

Officers deemed to be acting judicially.

82. Every Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officer's Protection Act, 1850.

18 of 1850.

Power to take evidence.

83. Every Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

Continuance of certificate.

84. No certificate shall cease to be in force by reason of the death of the defaulter.

Procedure on death of defaulter.

85. If at any time after the issue of the certificate by the Income-tax Officer to the Tax Recovery Officer the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representatives of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

Appeals.

86. (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the revenue authority to which appeals ordinarily lie against the orders of a Collector under the law relating to land revenue of the State concerned.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

Review.

87. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

Recovery from surety.

88. Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

Penalties.

89. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code. 45 of 1860.

Subsistence allowance.

90. (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the Income-tax Officer.

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

Forms.

91. The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

Power to make rules.

92. (1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely :—

(a) the manner in which any property sold under this Schedule may be delivered;

(b) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;

(c) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;

(d) the fees to be charged for any process issued under this Schedule;

(e) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;

(f) recovery of poundage fee;

(g) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale;

(h) the mode of attachment of business.

93. Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset. **Saving regarding charge.**

THE THIRD SCHEDULE

PROCEDURE FOR DISTRAINT BY INCOME-TAX OFFICER

[*See* section 226(5)]

Distraint and sale.

Where any distraint and sale of movable property are to be effected by any Income-tax Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.

THE FOURTH SCHEDULE

PART A

Recognised provident funds

[*See* sections 2(23), (38), 10(12), (25), 36(1) (iv), 111, 192(4)]

Application of Part.

1. This Part shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.

19 of 1925.

Definitions.

2. In this Part, unless the context otherwise requires,—

(*a*) "employer" means any person who maintains a provident fund for the benefit of his or its employees, being—

(*i*) a Hindu undivided family, company, firm or other association of persons, or

(*ii*) an individual engaged in a business or profession the profits and gains whereof are assessable to income-tax under the head "Profits and gains of business or profession";

(*b*) "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*c*) "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(*d*) "balance to the credit of an employee" means the total amount to the credit of his individual account in a provident fund at any time;

(*e*) "annual accretion" in relation to the balance to the credit of an employee, means the increase to such balance in any year, arising from contributions and interest;

(*f*) "accumulated balance due to an employee" means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund;

(*g*) "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund; and

(h) "salary" includes dearness allowance, but excludes all other allowances and perquisites.

According and withdrawal of recognition.

3. (1) The Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Board may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the date on which it is made.

(4) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund.

Conditions to be satisfied by recognised provident funds.

4. In order that a provident fund may receive and retain recognition, it shall, subject to the provisions of rule 5, satisfy the conditions set out below and any other conditions which the Board may, by rules, specify—

(a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India;

(b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, an credited to the employee's individual account in the fund;

(c) The contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year;

(*d*) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable, save with the consent of all the beneficiaries;

(*e*) The fund shall consist of contributions as above specified, received by the trustees, of accumulations thereof, and of interest credited in respect of such contributions and accumulations, and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund, and of no other sums;

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund:

Provided that in such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest credited in respect of such contributions in accordance with the regulations of the fund and the accumulations thereof;

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund;

(*h*) Save as provided in clause (*g*) or in accordance with such conditions and restrictions as the Board may, by rules, specify, no portion of the balance to the credit of an employee shall be payable to him.

Relaxation of conditions.

5. (*1*) Notwithstanding anything contained in clause (*a*) of rule 4 the Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in India, provided the proportion of employees employed outside India does not exceed ten per cent.

(*2*) Notwithstanding anything contained in clause (*b*) of rule 4, an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to serve the employer.

(3) Notwithstanding anything contained in clause (*e*) or clause (*g*) of rule 4,—

(*a*) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain the whole or any part of the accumulated balance due to the employee to be drawn by him at any time on demand;

(*b*) where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accodance with the preceding clause, the fund may consist also of interest in respect of such accumulated balance.

(4) Subject to any rules which the Board may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of clause (*c*) of rule 4,—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salaries do not in each case exceed five hundred rupees per mensem; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

(5) Notwithstanding anything contained in clause (*b*) of rule 4, in order to enable an employee to pay the amount of tax assessed on his total income as determined under sub-rule (3) of rule 11, he shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in sub-rule (2) of rule 11 had not been included in his total income.

Employer's annual contributions, when deemed to be income received by employee.

6. That portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—

(*a*) contributions made by the employer in excess of ten per cent. of the salary of the employees, and

(*b*) interest credited on the balance to the credit of the employee in so far as the balance exceeds one-third of the salary of the employee or is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification in the Official Gazette,

shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax and super-tax.

Exemption for employee's contributions.

7. An employee participating in a recognised provident fund shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on his own contributions to his individual account in the fund in the previous year, in so far as the aggregate of such contributions does not exceed one-fifth of his salary in that previous year or eight thousand rupees, whichever is less.

Exclusion from total income of accumulated balance.

8. The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—

(i) if he has rendered continuous service with his employer for a period of five years or more, or

(ii) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee.

Tax on accumulate balance.

9. (1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income owing to the provisions of rule 8 not being applicable, the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the previous year in which the accumulated balance due to him becomes payable.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 becomes payable, an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E of the Indian
11 of 1922. Income-tax Act, 1922, for any assessment year up to and including the assessment year 1932-1933, if the Indian Income-tax (Second Amend-
8 of 1933. ment) Act, 1933, had come into force on the 15th day of March, 1930, shall be payable by the employee in addition to any other tax payable by him for the previous year in which such balance becomes payable.

Deduction at source of tax payable on accumulated balance.

10. The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (*1*) of rule 9 applies, at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under that rule and all the provisions of Chapter XVII-B shall apply as if the accumulated balance were income chargeable under the head "Salaries".

Treatment of balance in newly recognised provident fund.

11. (*1*) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

(*2*) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-rule (*3*) of this rule and sub-rule (*5*) of rule 5 shall apply thereto.

(*3*) Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act, other than this Part.

(*4*) Subject to such rules as the Board may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Part had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employees in the previous year in which the recognition of the fund takes effect and shall be included in the employee's total income for that previous year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner may, subject to the said rules, make a summary calculation of such aggregate.

(5) Nothing in this rule shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or

with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

Accounts of recognised provident funds.

12. (*1*) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars, as the Board may prescribe.

(*2*) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Board may prescribe.

Appeals.

13. (*1*) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Board.

(*2*) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as the Board may prescribe.

Treatment of fund transferred by employer to trustee.

14. (*1*) Where an employer, who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(*2*) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of section 37, incurred in the previous year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

15. (*1*) In addition to any power conferred by this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for recognition;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or

creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purposes of this Part and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

(*2*) All rules made under this Part shall be subject to the provisions of section 296.

PART B

Approved superannuation funds

[*See* sections 2(6), 10(13), 25(iii), 36(1)(iv), 192(5), 206(2)]

Definitions. 1. In this Part, unless the context otherwise requires, "employer", "employee", "contribution" and "salary" have, in relation to superannuation funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

Approval and withdrawal of approval. 2. (*1*) The Commissioner may accord approval to any superannuation fund or any part of a superannuation fund which, in his opinion, complies with the requirements of rule 3, and may at any time withdraw such approval, if in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval.

(*2*) The Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(*3*) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(*4*) The Commissioner shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

3. In order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe— Conditions for approval.

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent. of the employees shall be employed in India;

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons;

(*c*) the employer in the trade or undertaking shall be a contributor to the fund; and

(*d*) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

4. (*1*) An application for approval of a superannuation fund or part of a superannuation fund shall be made in writing by the trustees of the fund to the Income-tax Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up, but the Commissioner may require such further information to be supplied as he thinks proper. Application for approval.

(*2*) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer mentioned in sub-rule (*1*), and in default of such communication any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

5. Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purpose of income-tax and super-tax to be the income of the employer of the previous year in which it is so repaid. Contributions by employer, when deemed to be income of employer.

6. Where any contributions made by an employer, including interest on contributions, if any, are paid to an employee during his life time, income-tax and super-tax on the amounts so paid shall be deducted at the average rate of income-tax and super-tax at which the employee was liable to income-tax and super-tax during the preceed- Deduction of tax on contributions paid to an employee.

ing three years or during the period, if less than three years, when he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Board may direct.

Deduction from pay of and contributions on behalf of employee to be included in

7. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under sub-section (*1*) of section 206.

Appeals.

8. (*1*) An employer objecting to an order of the Commissioner refusing to accord approval to a superannuation fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(*2*) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

Liability of trustees on cessation of approval.

9. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund the trustees of the fund, shall nevertheless remain liable to tax on any sum paid on account of returned contributions (including interest on contributions, if any), in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved superannuation fund under the provisions of this Part.

Particulars to be furnished in respect of superannuation funds.

10. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the Income-tax Officer may require.

Provision relating to rules.

11. (*1*) In addition to any power conferred by this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for approval;

(*b*) prescribing the returns, statements, particulars, or information which the Income-tax Officer may require from the trustees of an approved superannuation fund or from the employer;

(*c*) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer;

(d) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund;

(e) determining the extent to, and the manner in, which exemption from payment of income-tax and super-tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn;

(f) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder; and

(g) generally, to carry out the purposes of this Part and to secure such further control over the approval of superannuation funds and the administration of approved superannuation funds, as it may deem requisite.

(2) All rules made under this part shall be subject to the provisions of section 296.

PART C

Approved gratuity funds

[*See* sections 2 (5), 17 (1) (iii), 36 (1) (v), 206 (2)]

Definitions

1. In this Part, unless the context otherwise requires, "employer", "employee", "contribution" and "salary" have, in relation to gratuity funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

Approval and withdrawal of approval.

2. (1) The Commissioner may accord approval to any gratuity fund which, in his opinion, complies with the requirements of rule 3 and may at any time withdraw such approval if, in his opinion, the circumstances of the fund cease to warrant the continuance of the approval.

(2) The Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any gratuity fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval.

3. In order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent. of the employees shall be employed in India;

(b) the fund shall have for its sole purpose the provision of a gratuity to employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund or to the widows, children or dependents of such employees on their death;

(c) the employer in the trade or undertaking shall be a contributor to the fund; and

(d) all benefits granted by the fund shall be payable only in India.

Application for approval.

4. (1) An application for approval of a gratuity fund shall be made in writing by the trustees of the fund to the Income-tax Officer by whom the employer is assessable and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last three years for which such accounts have been made up, but the Commissioner may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alterations to the Income-tax Officer mentioned in sub-rule (1), and in default of such communication, any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Gratuity deemed to be salary.

5. Where any gratuity is paid to an employee during his life-time, the gratuity shall be treated as salary paid to the employee for the purposes of this Act.

Liability of trustees on cessation of approval.

6. If a gratuity fund for any reason ceases to be an approved gratuity fund, the trustees of the fund shall nevertheless remain liable to tax on any gratuity paid to any employee.

Contributions by employer, when deemed to be income of employer

7. Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purposes of income-tax and super-tax to be the income of the employer of the previous year in which they are so repaid.

Appeals.

8. (*1*) An employer objecting to an order of the Commissioner refusing to accord approval to a gratuity fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(*2*) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

Provisions relating to rules.

9. (*1*) In addition to any power conferred in this part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for approval;

(*b*) limiting the ordinary annual and other contributions of an employer to the fund;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or the creation of a charge upon, his beneficial interest in an approved gratuity fund;

(*d*) providing for the withdrawal of the approval in the case of a fund which ceases to satisfy the requirements of this Part or the rules made thereunder; and

(*e*) generally, to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and the administration of gratuity funds as it may deem requisite.

(*2*) All rules made under this Part shall be subject to the provisions of section 296.

STATEMENT OF OBJECTS AND REASONS

The Income-tax Act, 1922, has been subjected to innumerable amendments since the passing thereof. It was considerably revised in 1939 by Act 7 of 1939, and between the passing of Act 7 of 1939, and 1956, the Act had been amended not less than twenty-nine times and each of these amendments had been of considerable importance. The result of all these amendments was that the Act required revision with a view to simplification, and the Government therefore decided in 1956 to refer the Act to the Law Commission with a view to its simplification, the basic structure of the Act remaining unchanged. The Report of the Law Commission was received by Government in September, 1958, but in the meanwhile a Committee called the Direct Taxes Administration Enquiry Committee had been appointed by Government to consider measures designed to minimise inconvenience to assessees and to prevent evasion of income-tax. The Report of this Committee was received in 1959.

The recommendations of the Law Commission and the Direct Taxes Administration Enquiry Committee were examined in the Central Board of Revenue by a special Committee of senior officers in consultation with the Ministry of Law. This Committee also had to take into account suggestions for amendments received by Government from time to time from members of the public, Chambers of Commerce and other persons interested.

The present Bill is the outcome of such examination and follows the pattern recommended by the Law Commission.

The Notes on Clauses explain in detail the various provisions contained in the Bill.

NEW DELHI; MORARJI DESAI.

The 17*th April*, 1961.

Notes on clauses

CHAPTER I

PRELIMINARY

Clause 2.—

Sub-clauses (2), (4), (5) and (6).—These clauses are new and define certain expressions which occur in several places in the Bill.

Sub-clause (7).—This corresponds to section 2(2) of the existing Act, but the definition of "assessee" has been made more comprehensive so as to include all possible categories *e.g.*, persons who are themselves liable to pay the tax on income belonging to them, persons liable to pay tax on income belonging to other persons and persons deemed under certain sections of the Act to be assessees or assessees in default.

Sub-clause (*8*).—A new definition of "assessment" has been inserted on the lines of the Canadian Income-tax Act. [cf. 139(1) (d) of the Canadian Income-tax Act, 1948].

Sub-clause (9).—Though the expression "assessment year" occurs in several places in the existing Act, there is no definition thereof. A definition has, therefore, been felt to be necessary.

Sub-clauses (10) and (11).—Instead of giving an elaborate formula to arrive at the average rate of income-tax and super-tax wherever it becomes necessary, it would be more convenient and conducive to clarity to define them. The definitions are based on section 17(5) of the existing Act.

Sub-clause (*13*).—The definition of "business" accords with the existing section 2(4).

Sub-clause (*14*).—The definition of "capital asset" corresponds to the existing definition in section 2(4A). Sub-clause (iii) of the existing definition which excludes "any land from which the income derived is agricultural income" has been replaced by the words "any agricultural land in India".

Sub-clause (*15*).—The expression "charitable purpose" occurs in more than one place and therefore the definition in section 4(3) of the existing Act is brought in here.

Sub-clause (*18*).—As the expression "company in which the public are substantially interested" occurs in more than one place, the existing definition in section 23A of the Act is brought in here.

Sub-clause (*22*).—This corresponds to existing section 2(6A) with the following modifications:—

(*i*) A distribution by a company of bonus preference shares out of its accumulated profits is brought within the scope of the definition "dividend".

(*ii*) An explanation is added to the effect that the accumulated profits "shall include all profits of the company up to the date of distribution or payment referred to in this clause". It is sought to be made clear that the expression "accumulated profits" in sub-clause (c) includes all profits upto the date of liquidation of the company.

Sub-clause (*24*).—The definition of "income" corresponds to the existing definition in section 2(6C), but has been made more comprehensive by the inclusion of items deemed as income for the purpose of this Act.

The existing Act uses at several places the lengthy expression "income, profits and gains". To avoid repetition of the expression "profits and gains", "income" is being comprehensively defined.

Item (vii) of the existing definition of income relates to the profits and gains of insurance business carried on by a mutual insurance association or by a co-operative society. What is described as profits and gains in this item is, in fact, a surplus. The redraft brings out this aspect more clearly. A slight change is also made in the reference to mutual insurance associations. As under the Insurance Act mutual insurance can be carried on only by a company, the words "mutual insurance association" is being changed to "mutual insurance company."

Sub-clause (*26*).—The definition of "Indian company" [cf. section 2(7A) of the existing Act] is being recast in the light of the Companies Act, 1956 and the abolition of the distinction between Part A and Part B States. The existing position relating to companies registered in the State of Jammu and Kashmir is being retained.

Sub-clause (*29*).—In the existing Act there is no definition of the expression "legal representative" though there are several sections prescribing their rights and obligations under the Act. A definition of "legal representative" is therefore being included.

Sub-clause (*30*).—The existing Act uses various phrases for a person who is not a resident of India. For the sake of uniformity the phrase "non-resident" has been used in the Bill wherever practicable, and accordingly a definition is being inserted here.

Sub-clause (31).—The definition of "person" in section 2(9) of the existing Act has been amplified. The existing definition includes (a) a Hindu undivided family and (b) a local authority. The General Clauses Act defines "person" as including a company or association or body of individuals, whether incorporated or not. The charging section of the existing Act enumerates the units for taxation as "individual, Hindu undivided family, company, local authority, firm and other association of persons or the partners of a firm or the members of the association individually". Section 4 of the existing Act refers to a "person". It is, therefore, desirable to have a comprehensive definition of the word "person" so as to cover all the entities mentioned in (*i*) the existing definition in section 2(9) (*ii*) the existing charging provisions in sections 3 and 4 and (*iii*) the General Clauses Act.

Sub-clause (32).—This definition occurs in item (iii) of section 2(6C) of the existing Act, but as the expression occurs in more than one place, it is being transferred to the definition clause.

Sub-clause (35).—In the definition of "principal officer", it is made clear that apart from the secretary, treasurer, manager or agent, it is only those persons who are *connected with the management or administration* of a company, authority etc. who could be treated as principal officers.

Sub-clause (36).—A new definition of "profession" as including "vocation" is being introduced for the sake of simplicity.

Sub-clause (40).—The expression "regular assessment" occurs in more than one place in the Bill and a definition of the term in clause 2 would appear to be necessary and useful.

Sub-clause (41).—As the word "relative" occurs in more than one place, the existing definition in section 23A is brought in here.

Sub-clause (43).—The word "tax" is used in this Bill and the existing Act as including both income-tax and super-tax and this new definition would be useful in that context.

Sub-clause (44).—The Law Commission has recommended a self-contained code for the recovery of taxes in the Income-tax Act itself. The Direct Taxes Administration Enquiry Committee has recommended that the collection of income-tax should be undertaken by Central Government Officers also. This new definition "Tax Recovery Officer" is in pursuance of their recommendations.

Sub-clause (46).—The existing definition of "total world income" in section 2(15), second para, is being reproduced here with one

change. The existing words "except income to which this Act does not apply" are not happy, and have been replaced by more appropriate words which bring the wording in line with section 4(3) of the existing Act.

Sub-clause (47).—As a consequence of section 12B making capital gains as one of the items of income taxable, the words "sale, exchange, relinquishment or transfer" have been used in several places in the Act in connection with the transfer of capital assets. To avoid repetition of the lengthy phrase, it is thought desirable to use the word "transfer" and define it in clause 2 itself. The definition has been expanded to include extinguishment of a right in and the compulsory acquisition of the asset.

Clause 3.—This clause defines exhaustively the expression "previous year" which is sought to be briefly defined in clause 2(34) of the Bill. In substance this clause reproduces section 2(11) of the existing Act, and the few verbal changes made are with a view to achieving simplicity and to state the position clearly relating to various situations. Further, the provision at present contained in rule 5(i) of the schedule to the existing Act regarding insurance business has been brought here for the sake of comprehensiveness.

CHAPTER II

BASIS OF CHARGE

Clause 4.—This corresponds to section 3 of the existing Act with the following changes:—

(*i*) for the different entities, individual, Hindu undivided family etc. mentioned in the section, the word "person" has been substituted;

(*ii*) the proviso makes it clear that notwithstanding that tax is to be paid in respect of the income of a previous year, tax may be recovered on current income wherever so provided;

(*iii*) it is made clear that even where tax is deducted at source or paid in advance liability to pay the tax arises by virtue of this provision.

Clause 5.—This corresponds to existing section 4. The following changes have been made:—

(*i*) the income of residents and non-residents has been dealt with separately for the sake of simplicity and clarity;

(*ii*) section 4(1)(b)(iii) of the existing Act is being deleted with a view to removing the liability on remittances in

pursuance of item (1) of the recommendations in List II on page 72 of the Report of the Law Commission;

(*iii*) the first proviso to section 4(1) of the existing Act is being omitted as obsolete;

(*iv*) the second proviso to section 4(1) of the existing Act relating to "not ordinarily resident" is omitted in view of the proposal to abolish this category—*vide* item (2) of the recommendations in List II of the Report of the Law Commission;

(*v*) the third and the fourth provisos to section 4(1) of the existing Act are being omitted consistently with the proposal to abolish the tax on remittances;

(*vi*) (*a*) existing Explanation 1 is being modified by omitting the words "brought into" for the reason mentioned in item (ii) above,

(*b*) Explanations 2, 2A and 3 are transferred to clause 9 which deals with income deemed to accrue or arise in India,

(c) Explanation 4 is being omitted in view of the reasons stated against item (ii) above;

(*vii*) existing section 4(2) is being deleted consistent with the decision to abolish the tax on remittances;

(*viii*) existing section 4(3) forms the subject matter of a separate Chapter, *i.e.*, Chapter III dealing with income which does not form part of the total income.

Clause 6.—This clause corresponds to section 4A of the existing Act. Section 4B of the existing Act has been omitted in pursuance of the recommendation of the Law Commission relating to abolition of the category "not ordinarily resident." The following changes are made in respect of the provisions of section 4A incorporated in this clause:—

(*i*) Under section 4A(a)(iii) a person becomes a resident if he has been in India for a period of 365 days or more within the four years preceding the previous year and is in India during the previous year "otherwise than on an occasional or casual visit". The ambiguity caused by the phrase "otherwise than on an occasional or casual visit" has been remedied by specifically prescribing a period of 30 days or more as being necessary for rendering a visit to be other than a casual one.

(*ii*) In 4A(a)(ii) the words "has maintained for him" have been replaced by the words "causes to be maintained for him" which express the intention better.

(*iii*) The existing section 4A(a)(iv) has been omitted in pursuance of the recommendation of the Law Commission in item No. 6 on page 59 of List I of its Report.

Sub-clause (4) is new and is being inserted to provide for fixing the residence of persons other than individuals, Hindu undivided families, firms, associations or companies.

Sub-clause (5) is also new and gets over the difficulty caused by the decision in C.I.T. *vs.* Savumiamurthy (14 I.T.R. 185), where the Madras High Court held that since there can be a separate previous year for each source of income, the residential status of the person has also to be separately determined with reference to each such source. As this procedure is cumbersome and is not in conformity with the intention underlying the provision, the new sub-clause makes it clear that a person who is resident for one source of income shall be treated as resident for his other sources of income also.

Clause 7.—According to existing section 4(1), the chargeable income of every person includes income which is deemed to be received in India in the previous year. This clause enumerates at one place the receipts which under the law are deemed to be received in India in the previous year.

Clause 8.—This reproduces substantially section 12(1A) of the existing Act and is intended to specify the year in which dividend shall be deemed to be the income.

Clause 9.—Provisions relating to income deemed to arise to an assessee in India which are now to be found all over the existing Act are grouped together in this clause. Subject to drafting changes, the sections grouped together are sections 42(1) and (3) and Explanations to section 4(1). In reproducing Explanation 3 to section 4(1), the words "to the extent to which it has been paid out of the profits subjected to income-tax in the taxable territories" have been omitted.

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

General.—This chapter corresponds to section 4(3) of the existing Act and deals with the various kinds of income to be excluded in computing the total income of an assessee. The main changes are re-arrangement of the various clauses so as to bring out their common features, omission of obsolete provisions and incorporation of certain items of exemptions now contained in the notifications issued under section 60 of the existing Act.

Clause 10.—This clause groups together all exemptions other than those contained in section 4(3) (*i*) and (*ii*) of the existing Act

Sub-clause (*1*).—This corresponds to existing section 4(3) (*viii*).

Sub-clause (*2*).—This corresponds to existing section 14(*1*) with a slight verbal change of a clarificatory nature.

Sub-clause (*3*).—This corresponds to existing section 4(*3*) (*vii*).

Sub-clause (*4*).—This corresponds to existing section 4(*3*) (*xvi*) as amended by the Finance Bill, 1961.

Sub-clause (5).—This corresponds to existing section 4(*3*) (*via*), para (b).

Sub-clause (*6*)—

Item (*i*).—This corresponds to existing section 4(*3*) (*via*), Para (*a*).

Items (*ii*) to (*v*).—These correspond to sub-clauses (b) to (e) of the existing section 4(*3*) (x).

Item (*vi*).—This corresponds to existing section 4(*3*) (*xiv*). The only change made here is that the exemption is confined to foreigners as recommended by the Law Commission.

Item (*vii*).—This corresponds to existing section 4(3) (*xva*) as amended by the Finance Bill, 1961.

Item (*viii*).—This corresponds to existing section 4(*3*) (*xivb*).

Sub-clause (7).—This corresponds to existing section 4(*3*) (*xa*).

Sub-clauses (*8*) *and* (*9*).—These correspond to existing section 4(*3*) (*xv*).

Sub-clauses (10) and (11).—These incorporate most of the provisions contained in the proviso to Explanation 2 to existing section 7(*1*) as amended by the Finance Bill, 1961.

Sub-clause (*12*).—This exemption is now contained in section 58 G(*2*).

Sub-clause (*13*).—This corresponds to a part of the proviso to Explanation 2 to existing section 7(*1*). The only change made here is the deletion of the existing words "or on his leaving the employment in connection with which the fund is established". This deletion has been found necessary to deal with tax avoidance.

Sub-clause (*14*).—This corresponds to existing section 4(*3*) (*vi*), with the change that for the words "wholly and necessarily" the words "wholly, necessarily and exclusively" have been substituted.

Sub-clause (*15*).—Items (*i*), (*ii*), (*iii*) and (*iv*) correspond to existing section 4(3) (xvii), 4(3) (xviia), 4(3) (xviii) and 4(3) (xviib) respectively.

Sub-clause (*16*).—This corresponds to the exemption at present conferred by item No. 5 of Finance Department Notification No. 878F (Income-tax) dated 21-3-1922.

Sub-clause (*17*).—This corresponds to existing section 4(3) (xix).

Sub-clause (*18*).—This corresponds to existing section 4(*3*) (*xxii*)

Sub-clause (*19*).—This corresponds to existing section 4(*3*) (*x*) (*a*).

Sub-clause (*20*).—This corresponds to existing section 4(*3*) (*iii*).

Sub-clause (*21*).—This corresponds to existing section 4(*3*) (*xiii*).

Sub-clause (*22*).—This brings into the Act an exemption conferred by item No. 12 of Finance Department Notification No. 878F (Income-tax), dated 21-3-1922.

Sub-clause (*23*)—.This corresponds to the proposed section 4(3) (*iia*), contained in the Finance Bill, 1961.

Sub-clause (*24*).—This corresponds to existing section 4(*3*) (*xia*).

Sub-clause (*25*).—

Items (*i*) and (*ii*).—These correspond to existing sections 4(*3*) (*iv*) and 4(*3*) (*ix*).

Item (*iii*).—This exemption is at present contained in section 58R.

Sub-clause (*26*).—This corresponds to existing section 4(*3*) (*xxi*).

Clauses 11 *to* 13.—These clauses are based on existing section 4(*3*) (*i*) and (ii). The changes made are pursuant to certain recommendations of the Direct Taxes Administration Enquiry Committee, as contained in paragraph 7.81(*2*) of its report. Briefly they are:—

(*i*) the conditions laid down in sub-clause (*b*) of the proviso to section 4(*3*) (*i*) are made applicable to trusts as well as institutions;

(*ii*) a charitable trust or institution carrying on business would qualify for exemption only if the business is being carried

on in the course of carrying out the primary object of the trust itself;

(*iii*) any amount in excess of 25% of the income of the charitable trust set apart for future expenditure will not qualify for exemption; and

(*iv*) any trust which contains a clause by which any relative of the author of the trust or the founder of the institution gets a benefit directly or indirectly would disqualify for exemption.

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Clause 14.—This corresponds to section 6 of the existing Act. The opening words of the section have been modified so as to make it clear that the section merely classifies the chargeable income into different heads, for the purpose of computation of total income.

Clause 15.—Clauses 15, 16 and 17 correspond to section 7. Clause 15 deals separately with salary chargeable on the "due" basis, salary chargeable on the receipt basis and salary received in arrears. The word "employer" has been substituted for the words "Government, a local authority, a company or any other public body or association or any private employer", as suggested by the Law Commission, in order to eliminate any risks of omission of any particular type of employer.

Clause 16.—This clause sets out the allowances that are now admissible. A new provision allowing professional tax paid under any State Law has been added. It has also been clarified that deduction for entertainment allowance from the salary of a non-Government employee would be admissible only if the employee is continuously in receipt of the allowance from the present employer from 1-4-55.

Clause 17—This clause reproduces the definitions of "perquisites" and "profits in lieu of salary", in Explanation 2 to section 7(*1*) of the existing Act, but the definition of "profits in lieu of salary" has been amplified to include not only compensation in connection with termination of employment but also compensation received in modification of terms of employment.

Clauses 18 to 21.—Correspond to existing section 8. Clause 18 relates to the charge; clause 19 relates to deductions in general; clause 20 relates to deductions in the case of banking companies and clause 21 relates to amounts not deductible.

Clause 18.—The changes made in this section are the substitution of the word "due" for the word "receivable" and the insertion of a provision for chargeability of interest received in any year but not charged on the "due" basis earlier. This change brings the charge under section 8 in line with the other provisions of the Act whereby liability to tax attaches at the point of accrual of income. (Compare section 7).

Clause 19.—This clause and clause 21 incorporate the substance of existing section 8, first proviso, which deals with three things:

(*i*) allowances for realisation expenses and interest on money borrowed for investment;

(*ii*) exception to the allowance at (*i*) above in respect of interest payable outside India; and

(*iii*) counter-exception to the exception at (*ii*) above for interest from which tax is deducted at source or an agent can be appointed under section 43 of the existing Act.

The proviso is now split up. Item (i) above has been incorporated in clause 19, while items (ii) and (iii), in clause 21.

Clause 20.—This embodies the Explanation to section 8 in a simpler form.

Clause 21.—See notes to clause 19.

Clauses 22 *to* 27 relate to assessment of house property now dealt with under section 9 of the existing Act.

Clause 22.—In this clause, the words "bona fide" before "annual value" occurring in the existing section have been omitted as unnecessary as recommended by the Law Commission.

Clause 23.—Sub-clause (1) corresponds to existing section 9(2) with the changes proposed in the Finance Bill, 1961.

Sub-clauses (2) and (3) embody the provisions of the first and the second provisos respectively of section 9(2). In sub-clause (3) the following changes have been made:—

(*i*) The word "occupied" has been replaced by "actually occupied" in all places.

(*ii*) The case where the property remains unoccupied for the whole year and the case where it remains unoccupied for a part of the year have been dealt with as separate items, for the sake of clarity.

Clause 24.—This clause sets out the deductions now contained in section 9(1) of the existing Act.

Items (*i*) and (*ii*).—This item corresponds to existing section 9(1)(i) and (ii). It is made clear that where under the terms of tenancy, the tenant has to bear the cost of repairs, it is the excess of the annual value over the rent payable that will be allowed as a deduction unless 1|6th of the annual value happens to be less than this figure.

Item (*iii*).—This item corresponds to section 9(1)(iii).

Items (*iv*) to (*vii*).—Existing section 9(1)(iv) has been split up into four items.

Item (*viii*).—This item corresponds to existing section 9(1)(v).

Item (*ix*).—This item corresponds to existing section 9(1)(vi) with the modification that the prescribed maximum is mentioned in the Act itself instead of in the rules as at present.

Item (*x*).—This item corresponds to existing section 9(1)(vii) with drafting changes.

Item (*xi*).—This is new and brings into the Act a provision contained in item 38 of Finance Department Notification No. 878F dated 21-3-22.

Sub-clause (2).—This corresponds to the second proviso to existing section 9(2) with drafting changes.

Clause 25.—This corresponds to the proviso to existing section 9(1)(iv).

Clause 26.—This clause corresponds to existing section 9(3).

Clause 27.—

Item (*i*).—This has been inserted pursuant to the recommendation of the Direct Taxes Administration Enquiry Committee in paragraph 7·81(7) of its Report.

Item (*ii*).—This corresponds to the existing section 9(4)(a).

Item (*iii*).—This reproduces the existing section 9(4)(b), with an additional provision relating to part of a building such as a flat.

Items (*iv*) *and* (*v*).—The definitions of annual value and capital charge have been taken from the decision of the Supreme Court in

New Piece Goods Bazar Co., Ltd., Bombay *vs.* C.I.T., Bombay, 18 I.T.R. 516.

Item (vi).--This corresponds to existing section 9(4) (c).

Clauses 28 *to* 43.—Correspond to section 10 of the existing Act. The existing section has been rearranged so as to deal separately with the charging provisions, deductions, amounts not deductible and interpretations.

Clause 28.—This sets out the items chargeable under the head "business or profession" and, "profession" has been defined to include "vocation". In this clause, the provisions of section 10(5A) and 10(6) have been brought in.

Explanation 1 is new and is intended to make it clear that income of managing agency is assessable as business income.

Explanation 2 incorporates Explanation 1 to section 24(1) of the existing Act.

Clause 30.—This clause corresponds to the relevant portions of existing section 10(2) (i), (ii), (iv), (v) and (ix) with verbal changes.

Clause 31.—This clause corresponds to the relevant portions of existing section 10(2) (iv) and (v).

Clause 32.—This corresponds to existing section 10(2) (vi) and (vii) dealing with depreciation and obsolescence allowances with certain changes. The principal changes made are:—

(*i*) Clauses (a) and (c) of the proviso to existing section 10(2) (vi) have been separately set out in clause 34 and clause (*b*) has been carried over to the chapter relating to set-off and carry forward and set-off of losses, as being the more appropriate place.

(*ii*) In the case of ships other than ships plying on inland waters, depreciation is to be calculated as has always been intended on the actual cost instead of original cost.

(*iii*) The terminal allowance on sale or destruction etc. of an asset admissible under the existing section 10(2) (vii) is made applicable to furniture also in accordance with the recommendation of the Direct Taxes Administration Enquiry Committee—*vide* para 12 of Chapter 3 of its Report.

(*iv*) It is made clear that no depreciation and obsolescence allowance will be admissible to an asset purchased and sold in the same year. This is in accordance with the recommendation of the Direct Taxes Administration Enquiry Committee—*vide* para 13, Chapter 3 of its Report.

(*v*) A definition of "sold" had been added to make it clear that in this context the expression "sold" would include transfer by way of exchange or compulsory acquisition.

(*vi*) The provision relating to charging the profit arising from the sale of an asset used in business, has been set out separately in clause 41 (1).

(*vii*) Obsolete provisions have been omitted.

Clause 33.—This corresponds to the existing section 10 (2) (vib) incorporating the amendment proposed in clause 6, sub-clauses (i), (ii) and (iii), of the Finance Bill, 1961.

Clause 34.—

Sub-clause (1).—The provisos to section 10 (2) (vi) and section 10 (2) (vib) of the existing Act lay down that the deductions under those clauses are to be allowed only if the prescribed particulars are furnished. This is embodied here with a slight modification extending those conditions to cases covered by the existing section 10 (2) (vii).

Sub-clause (2) (*i*) corresponds to the proviso (c) to existing section 10 (2) (vi) which provides that the aggregate allowance for depreciation shall not exceed the actual cost.

Sub-clause (2) (*ii*).—This corresponds to a part of existing section 10 (2) (vib) wherein the conditions for allowance of development rebate are set out.

Certain further changes have been made pursuant to the recommendations of the Direct Taxes Administration Enquiry Committee. These changes are:

(*i*) The period during which the asset should not be sold or otherwise transferred to any person other than Government has been reduced from 10 years to 8 years, *vide* Direct Taxes Administration Enquiry Committee's recommendation in paragraph 3·22.

(*ii*) The concession of non-withdrawal of rebate if the asset is sold to Government has been extended to assets transferred to a local authority, a corporation established under any law of the Central, State Government or to a Government company, *vide* recommendation of the Direct Taxes Administration Enquiry Committee, paragraph 3·22.

Clause 35.—This corresponds to the existing sections 10 (2) (xii), 10 (2) (xiii) and 10 (2) (xiv) with verbal alterations as recommended by the Law Commission.

Clause 36.—

Sub-clause (1).—Items (*i*), (*ii*) and (*iii*) correspond to existing section 10(2), clauses (iv), (x) and (iii) respectively.

Item (iv).—This is new. Section 58R of the existing Act provides for deduction of contribution by employers to approved superannuation funds from the income of the employers. The Law Commission thought that this provision should be referred to in this clause as it is actually a deduction from business income. An analogous provision in respect of payments to recognised provident funds has also been made.

Item (v).—A provision similar to item (iv) is being made for contributions to approved gratuity funds.

Item (vi).—This corresponds to existing section 10(2) (viii).

Item (vii) read with sub-clause *(2)*.—This corresponds to existing section 10(2) (xi) with the following changes pursuant to the recommendations of the Direct Taxes Administration Enquiry Committee and the Law Commission in this regard:—

(i) A condition has been added that the debt must have been taken into account in computing the income for an earlier year. Compare section 11(1) (a) of the Canadian Income-tax Act and section 63(1) (a) of the Australian Income-tax Act.

(ii) Cases of hardship where bad debt is written off in one year but the Income-tax Officer holds the debt to have become bad in another year are proposed to be dealt with as follows:—

(a) if the bad debt is written off in an earlier accounting year and the Income-tax Officer had not allowed it in that year as having been prematurely written off, the Income-tax Officer is empowered to allow it in any subsequent year when he is satisfied about its irrecoverability; and

(b) conversely, if the bad debt is written off in the accounts of the previous year corresponding to the current assessment year but the Income-tax Officer finds that it had become a bad debt in an earlier previous year, the Income-tax Officer is empowered to reopen the assessment of the earlier previous year and allow the debt, provided the earlier previous year the assessment of which to be re-opened does not fall beyond a period of 4 years immediately preceding the year in which the debt is written off. One important condition for the Income-tax Officer for doing so would be that the assessee should accept the finding of the Income-tax Officer in this regard.

Item (viii).—This corresponds to section 10(2) (xiva) as proposed in clause 6(iv) of the Finance Bill, 1961.

Clause 37.—This corresponds to existing section 10(2) (xv) with the additions proposed in clause 6(v) of the Finance Bill, 1961, with the change that the existing words "wholly and exclusively" have been substituted by the words "wholly, necessarily and exclusively".

Clause 38.—

Sub-clause (1).—This corresponds to the existing provisions of sections 10(2) (i), 10(2) (ii) and the latter portion of section 10(2) (ix) with verbal changes.

Sub-clause (2).—This corresponds to the existing section 10(3).

Clause 39.—This corresponds to existing section 12A. The clause makes it clear that the agreement for sharing the managing agency commission should be in writing.

Clause 40.—This clause collects together all provisions dealing with amounts not deductible in computing the profits and gains of a business or profession.

Para (a): *Item (i)*.—This corresponds to a portion of the proviso to existing section 10(2) (iii).

Item (ii).—This corresponds to the first para of existing section 10(4).

Items (iii) and (iv).—These correspond to existing section 10(4) (a) and 10(4) (c).

Para (b): This corresponds to existing section 10(4) (b) with the following modifications:

(*i*) bonus is also added to the items disallowable under this clause;

(ii) the provisions of this section are extended to cover any payment made by an association of persons to any member of the association or by a body of individuals to any member of the body or by a Hindu undivided family to a member of the family. It has, however, been provided that any payment of interest to a member of the Hindu undivided family on any funds contributed out of the self acquired funds of that member will not be disallowed.

Para (c).—This corresponds to the existing section 10(4A) with the modification that the provisions of this clause are also made applicable

to relatives of the Director or of the person having substantial interest in the company.

Para (d) embodies the last line of clauses (a) and (b) of the Explanation to existing section 8.

Clause 41.—In this clause are brought together those provisions of section 10 of the existing Act which deal with the chargeability of certain items as profits of business or profession.

Sub-clause (1).—This corresponds to the existing section 10(2A) with the clarification that the amount is assessable irrespective of whether the business or profession is continued or not in the year in which the amount becomes chargeable.

Sub-clause (2).—This corresponds to the provisions contained in the second and fourth provisos to the existing section 10(2) (vii). The changes made here are verbal and seek to clarify that where the monies payable for sale or destruction are not determined in the year in which the sale, destruction etc. took place, the profit will be assessable in the assessment year in the previous year of which that sum is determined. The Explanation clarifies that the provisions of this sub-section will apply even if the business or profession is not in existence in the year in which the sums fall to be assessed.

Sub-clauses (3) and *(4)* correspond to existing section 10(2) (xiv) and 10(2) (xi), earlier half of first proviso respectively, of the existing Act.

Clause 42.—This corresponds to the existing section 10(2AA).

Clause 43.—This clause groups together all provisions in the nature of definitions or interpretations relevant to computation of income under profits and gains of business.

Sub-clause (1).—The definition of actual cost has been amplified by excluding such portion of the cost as is met directly or indirectly by any other person or authority. At present such exclusion is restricted only to cost met by Government or by any public or local authority.

Explanation 1.—This corresponds to a portion of paragraph (e) of the second proviso to existing section 10(2) (xiv).

Explanation 2.—Existing section 10(5) (c) provides that in the case of an asset acquired by the assessee by gift or inheritance, its written down value shall be the written down value in the case of the previous owner, or the market value, whichever is less. The provisions thus appear as a part of the definition of "written down

value"; but it would be more appropriate to place it as a part of the definition of actual cost since what is intended is the fixation of a notional figure of actual cost and not a notional figure of written down value as such.

Explanation 3.—This corresponds to the first proviso to existing section 10(5) (a) with a slight verbal change.

Explanation 4.—This is based on the second proviso to existing section 10(5) (a). The purpose of this proviso is to safeguard against a certain type of tax avoidance. When an assessee sells his assets to another person after using it for some time (and getting the depreciation allowance for such use) and later re-acquires the asset at an enhanced value he would be entitled to claim a higher depreciation allowance with reference to the cost of re-purchase. To defeat this attempt, this proviso has been inserted. The proviso provides that in such cases the actual cost for purposes of depreciation will be the actual cost to the assessee less any depreciation already allowed to him prior to the sale. However, there may conceivably be cases where the assessee would have also obtained terminal allowance under section 10(2) (vii). This should also be taken into account while determining the actual cost. Further there may occur cases where the assessee would repurchase the asset at a considerably lower value than his original cost less depreciation and obsolescence allowances. In such a case there is no justification for allowing depreciation on any higher amount. These points have been clarified.

Explanation 5.—This corresponds to the first proviso to existing section 10(5) (b). It is more appropriate to bring this under the definition of actual cost having regard to the definition of "written down value".

Explanation 6.—This is based on the second proviso to existing section 12B(1).

Sub-clauses (2) and (3).—These correspond to the definitions in the first paragraph of existing section 10(5).

Sub-clause (4).—This corresponds to the Explanation to existing section 10(2) (xiv) with slight verbal changes.

Sub-clause (5).—This corresponds to Explanation 2 to section 24(1) of the existing Act with a slight verbal change.

Sub-clause (6).—This reproduces the definition of written down value given in existing sections 10(5) (a) and 10(5) (b) with the changes consequent on removing some portion of the definition to the part relating to actual cost as indicated above.

Explanation 1.—This corresponds to the second proviso to existing section 10(5) (b). The form has been changed. The existing proviso says that in cases of succession to business, the actual cost referred to in the main part (definition of the written down value) shall be the cost to the predecessor in business. The effect of this is that the written down value that would have been adopted in the case of the predecessor in business would be regarded as the written down value of the assets even in the hands of the successor. This effect has been sought to be brought about more directly in the provision as redrafted.

Explanation 2.—This is based on existing section 12B(1), second proviso.

Explanation 3.—This embodies the existing section 10(5), Explanation—latter half.

Clause 44.—This corresponds to existing section 10(7) and Rule 9 of the schedule with the change that the provisions relating to capital gains are also excluded in computing profits and gains of an insurance business in accordance with the procedure laid down in the schedule.

Clauses 45 to 55.—These embody the provisions of existing section 12B. The provisions have been split up, simplified and logically re-arranged. The following changes have been made:—

(1) any transfer by way of distribution of the capital assets by a company in liquidation is not regarded as a transfer for the purpose of charging capital gains in the case of the company, but the shareholder receiving the capital assets from the company is chargeable on the difference between the market value of the asset on the date of distribution and the cost of acquisition of the shares by him, subject to appropriate adjustment, if any, on the portion of the value of the capital asset which has been assessed as dividend under section 2(6A) (c) of the existing Act;

(2) any distribution of capital on the dissolution of a firm and any transfer of a capital asset under an irrevocable trust, is not regarded as a transfer for the purpose of capital gains tax;

(3) the distinction drawn between assets acquired as a result of a partition of Hindu undivided family or by way of gift, before and upto 1-4-56 has been abolished. A uniform procedure is proposed according to which, for assets acquired before 1-1-54, either the market value on the date of acquisition or the market value on 1-1-54, at the option of the assessee, is adopted, whatever be the mode of acquisition;

Clauses 56 to 59.—These clauses correspond to the existing section 12 dealing with income taxable under the head "other sources". The changes made here are merely verbal.

Clause 56.—Sub-clause (1).—Sub-section (1) of existing section 12 is reproduced here with slight verbal changes.

Sub-clause (2).—Item (*i*) corresponds to existing section 12(1A).

Items (*ii*) and (*iii*) are in form new though sub-sections (3) and (4) of existing section 12 imply that such income is taxed under the residuary head. This implication has been expressly stated here.

Clause 57.—Deductions pertaining to "income from other sources" at present scattered in the various sub-sections of existing section 12 are brought together here.

Item (*ii*).—Existing section 12(3) and (4) provide that where machinery, plant or furniture is let on hire, the assessee shall be entitled to allowances in accordance with the provisions of section 10(2), clauses (iv) to (vii). These clauses of section 10(2) provide for (*a*) deductions for certain expenses, depreciation and loss on sale and (*b*) charging of tax on profits on sale, destruction etc. The provisions for deductions are separated and brought in here with verbal changes consequential on the scheme adopted in the Bill for the existing section 10(2)(iv) to (vii). For the provisions relating to charging of tax on profits arising from sale etc. see clause 59.

Item (*iii*).—The expression "solely for the purpose......" occurring in the existing section has been substituted by the words "wholly, necessarily and exclusively for the purpose...." to secure uniformity with the language adopted elsewhere in the Bill.

CHAPTER V

INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME

Clauses 60 to 63.—These clauses embody the provisions of section 16(1)(c) of the existing Act with certain modifications. Existing section 16(1)(c) deals with two kinds of transfers:

(1) transfer of income only without transfer of the corpus;

(2) revocable transfer of the corpus.

To secure clarity, these two kinds of transfers have been dealt with in separate clauses, namely clauses 61 and 62, and 'transfer' is defined in clause 63.

Clause 60.—This clause deals with transferred income when there is no transfer of the assets as defined in clause 63.

Clause 62.—This clause sets out in clearer language the provisions of the third proviso to the existing section 16(1) (c) subject to a modification. Under the existing proviso, exemption from the operation of 16(1) (c) is conferred on trusts which are not revocable either during the life time of the beneficiary or for a period exceeding six years, provided that the transferor does not derive any direct or indirect benefit in either case. The exemption in respect of the latter category (i.e. trusts not revocable for a period exceeding six years) is proposed to be withdrawn in respect of trusts created from and after 1st April, 1961.

Clause 64.—This clause corresponds to the existing section 16(3) with necessary changes to give effect to the recommendations of the Direct Taxes Administration Enquiry Committee contained in paragraphs 7·81(5) and 7·81(6) of its report.

Clause 65.—This is new and has been inserted to give effect to the recommendation of the Direct Taxes Administration Enquiry Committee in paragraph 5·77 of that Committee's report.

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

Clauses 66 and 67 deal with aggregation of income in computing the total income of a person and embody the provisions of existing section 16(1) (a) and 16(1) (b) with certain changes.

Clause 66.—This states the general principle that the items of income dealt with under Chapters VII and VIII are to be included in the total income for rate purposes.

Clause 67—Sub-clause (1).—This clause sets out the method of computing a partner's share in the income of a firm and embodies the provisions contained in the existing section 16(1) (b).

Sub-clause (2).—This is new and is merely clarificatory.

Sub-clause (3).—This is new and implements the recommendation of both the Direct Taxes Administration Enquiry Committee and of the Law Commission, *vide* sub-para (a) of paragraph 3·98 of the Report of the Direct Taxes Administration Enquiry Committee and item 7 on page 61 of List I of the Law Commission's Report.

Sub-clause (4).—This reproduces the provisions of the proviso to existing section 16(1) (b) with verbal changes.

Clauses 68 and 69.—These are new and incorporate the recommendations of the Law Commission at items 10 and 11 on page 70 of List I of its Report.

Clauses 70 to 79 correspond to the provisions contained in the existing section 24 with some minor modifications.

Clause 70.—This clause is new and gives statutory force to a principle already established by courts.

Clause 71.—This corresponds to the main paragraph of existing section 24(1) with the change that an option is given to the assessee not to have the loss incurred under any head set off against income under "Capital gains".

Clause 72.—This corresponds to existing section 24(2) with drafting changes of a clarificatory nature. The provision relating to speculation losses has been separately dealt with in clause 73. Sub-clause (2) corresponds to proviso (b) to section 24(2) and sub-clause (3) to clause (iii) of section 24(2).

Clause 73 deals separately with losses in speculation business which is at present dealt with in section 24(2) along with other losses.

Clause 74.—This corresponds to existing section 24(2A) and (2B).

Clause 75.—This clause embodies the provisions of the second proviso, latter half, of existing section 24(1) and earlier part of proviso (c) to existing section 24(2). The changes are merely of a drafting nature.

Clause 76.—This deals with the position of losses arising to an unregistered firm assessed as a registered firm under the provisions of section 23(5)(b) of the existing Act, and corresponds to existing section 24(2), proviso (d), with verbal changes.

Clause 77.—While clauses 75 and 76 deal with losses arising to a registered firm and an unregistered firm treated as registered, this clause deals with losses arising to an unregistered firm and corresponds to the second proviso to existing section 24(1), earlier half, and proviso (c) to section 24(2), latter part. In sub-clause (2) it is clarified that this clause will apply to a share of loss from an unregistered firm irrespective of whether the firm itself has been assessed or not.

Clause 78.—This corresponds to proviso (e) to existing section 24(2), and it is clarified that this provision actually applies to carry forward and set off of losses.

Clause 79.—This implements the recommendation of the Direct Taxes Administration Enquiry Committee, paragraph 7. 81 (12).

Clause 80.—A part of the existing section 22 (2A) has been incorporated in this clause as it is germane to set off of losses. The limitation imposed has been extended so as to apply to carry forward of loss under the head "Capital-gains".

CHAPTER VII

INCOME FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX PAYABLE

In this chapter those items of income which are included in the total income for rate purposes but on which no income-tax is payable are set out. Such items fall into two categories:—

(1) Incomes which are included in the total income but are themselves not taken into account in calculating the amount of tax payable.

(2) Incomes which are included in the total income and are also taken into account for determining the amount of gross tax but in respect of which a rebate is allowed at the average rate of tax.

It is the former category that is dealt with in this Chapter. The latter category is dealt with in the following Chapter under the head "Rebate and Reliefs". This Chapter deals exclusively with exemptions relating to income-tax. Exemptions in respect of super-tax have been separately dealt with in Chapter XI.

Clause 81.—This corresponds to existing section 14 (3).

Clause 82.—This corresponds to existing section 14 (4).

Clause 83.—This corresponds to existing section 14 (5).

Clause 84.—This corresponds to the existing section 15C [excluding sub-section (4)] with the amendments proposed in clause 7 of the Finance Bill, 1961. In sub-clause (2) (ii), the condition now imposed, namely, that any building, machinery or plant previously used in any other business should not be used by the industrial undertaking, is made stricter by substituting the words "for any purpose" for the words "in any other business", so that a building used as a residential property previously would not, for example, be entitled to this exemption.

Clause 85.—This reproduces existing section 15C (4) with the modification that the Central Board of Revenue may frame rules to

determine the portion attributable to the profits exempt under clause 84.

Clause 86.—Items (i) and (ii) correspond to the second and third provisos to existing section 8. Item (iii) corresponds to existing section 14(2) (a); item (iv) corresponds to existing section 14(2) (aa); and item (v) corresponds to existing section 14(2) (b).

CHAPTER VIII

REBATES AND RELIEFS

The provisions contained in the existing Act which are in the nature of rebates of income-tax on certain expenditure have been collected together in this Chapter.

Clause 87.—

Sub-clause (*1*) contains provisions now to be found in existing sections 15(1), 15(2), 7(1) first proviso, 58F and 58R.

Sub-clause (*2*).—Existing section 15(2A) has been split up for the sake of simplicity.

Sub-clause (*3*) reproduces existing section 15(3) in a simplified form.

Clause 88.—This section corresponds to the existing section 15B. In sub-clauses (1) to (4) the changes made are all verbal. Sub-clause (5) corresponds to existing section 15B(2) and the main changes are:

(*a*) The amplification of existing clause (i) of section 15B(*2*). This clause speaks of income of the institution or fund being exempt under clause (i) of sub-section (3) of section 4. In cases where the institution has no property, the application of this condition becomes difficult. Further, it is desirable to include institutions which derive income from voluntary contributions and also universities or other institutions existing solely for educational purposes. All these categories are now included in condition (i).

(*b*) It is provided that the exemption will not be available to any donation paid to an institution or fund under the rules of which any part of the income or the assets of the institution or the fund can be applied to any non-charitable purpose at any time. This has been inserted with a view to countering attempts at tax avoidance.

Clause 89.—

Sub-clause (1) corresponds to existing section 60(2).

Sub-clause (2) provides for relief in respect of interest on securities received in arrears.

CHAPTER IX

DOUBLE TAXATION RELIEF

Clause 90.—This reproduces section 49A of the existing Act.

Clause 91.—This clause is based on existing section 49D. Sub-sections (2) and (4) of the existing section have been omitted as obsolete and a new provision is added as sub-section (3) to provide relief to non-resident partners of a resident registered firm in respect of the share of income from the firm assessed in India as well as in a foreign country with which there is no agreement.

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Clause 92.—This is a redraft of section 42(2) of the existing Act and brings out the intention more clearly.

Clause 93.—Section 44D of the existing Act has been redrafted with a view to simplification and to bringing out the intention more clearly. The notes to clause 96 in the Law Commission's Report, pages 383-384 explain the changes made fully.

Clause 94.—Sections 44E and 44F of the existing Act have been combined. The scope of this provision is widened in order to cover all cases where the transaction of sale and repurchase of securities results in tax avoidance. The provisions regarding the avoidance have also been tightened up. For a fuller explanation, see page 385 of the Law Commission's Report.

CHAPTER XI

SUPER-TAX

Clause 95.—Except for minor drafting changes, sub-clause (1) corresponds to the main para of section 55 of the existing Act. Sub-clause (2) is new and has been inserted to make it clear that wherever it is so provided, tax is deductible at source or payable in advance. Sub-clause (3) is a re-draft of the first proviso to section 55 to make it clear that both in the case of an unregistered firm assessed as a registered firm under existing section 23(5) (b) and of a registered firm, partners are liable to pay super-tax.

Clause 96.—This corresponds to section 56 of the existing Act. The changes made are verbal, consequent on the rewording of existing section 55 in clause 95.

Clause 97 corresponds to section 58(1) of the existing Act. The general rule that the provisions for income-tax shall apply to the charge etc. of super-tax is stated in sub-clause (1) while the exceptions are dealt with in sub-clause (2).

Clause 98 is new and is intended to facilitate the application of the provisions dealing with avoidance of income-tax, for purposes of super-tax also.

Clause 99.—This clause sets out the items of income which are included in the total income but on which super-tax is not charged. The Law Commission in Chapter XI-B refers to these items as incomes which do not form part of total income. The position in law, however, is that all these items form part of the total income for rate purposes.

Sub-clause (1).—Items (i) and (ii) correspond to the second proviso to section 55 of the existing Act.

Item (iii) corresponds to section 14(4) of the existing Act.

Item (iv).—This clause reproduces the provisions of section 56A of the existing Act with the omission of the words "as specified in the first schedule to the Industries (Development and Regulation) Act, 1951".

Clauses 100 to 103 group together provisions now to be found in sections 15B, 14(2) (aa), and 17(3).

Clauses 104 to 109.—These clauses embody the provisions of section 23A of the existing Act with the following changes:

(1) The percentage mentioned in clause (ii) of sub-section (2) of section 23A has been increased from 5 per cent to 10 per cent.

(2) Where a re-assessment is made in the case of a company under the provisions of existing section 34(1)(b), an opportunity, if found necessary, will be given to the assessee, for making up the shortage in distribution.

(3) A time-limit is laid down for passing an order under existing section 23A, vide recommendation of the Direct Taxes Administration Enquiry Committee, in para 3.49.

(4) In working out the distributable income, any amount paid as donation to a charitable institution is allowed as deduction.

(5) A clarification is introduced in Explanation (2) (iv) of the existing section 23A stating that reserves mentioned in sub-clause (a) includes depreciation reserves and that under clause (iv) (a) (2) it is the book cost which is to be compared.

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

Clause 110 embodies the main provisions of the existing section 17(2) with drafting changes to make the intention clear.

Clause 111 corresponds to existing section 58G.

Clause 112.—This clause corresponds to the latter half of the last paragraph of existing section 10(5A). To remove certain anomalies which came to the notice of the Government while administering the provisions as they stand in the existing Act, it is now proposed to tax compensation receipts by applying to it the formula now adopted for taxing capital gains.

Clause 113 corresponds to section 17(1) of the existing Act with the modification that where a non-resident elects to be assessed on the basis of his total world income, the tax payable by him will be either (1) the tax calculated on the total income as if it were his total world income *or* (2) the proportionate tax on the total income at the rate applicable to the total world income, whichever is greater. This modification has been made with a view to off-set the undue advantage which accrues to a non-resident under the present rule whereby he is enabled to set-off his foreign losses against the Indian income. It is also clarified that where a non-resident is permitted to file the option for being assessed on the basis of his total world income after the due date, such option will be effective for the assessment of the year in which it is filed and for subsequent assessment years.

Clauses 114 *and* 115.—These clauses correspond to section 17(6) and (7) of the existing Act with certain changes of a clarificatory nature.

CHAPTER XIII

INCOME-TAX AUTHORITIES

This Chapter deals with the various Income-tax authorities, their appointment and control, jurisdiction, powers and duties and disclosure of information, which are contained in sections 5, 37, 38, 54 and 64 of the existing Act. The substance of these sections have been re-arranged in a rational manner, and the changes made are indicated below:—

(1) That portion of section 5(4) which states that the Appellate Assistant Commissioner shall be under the direct control of the Central Board of Revenue has been omitted as unnecessary.

(2) A new Explanation has been added stating that the Inspecting Assistant Commissioner is not subordinate to a Deputy Director or an Assistant Director of Inspection and that an Income-tax Officer is not subordinate to an Assistant Director of Inspection.

(3) It is clarified that the provisions contained in the existing section 64 merely define the jurisdiction of the Income-tax Officer and does not confer any right on the assessee to be assessed at a particular place.

(4) Sub-section (5) of section 64 has been omitted as unnecessary in the light of the changes made in the re-draft.

(5) The provisions of section 5(7A) of the existing Act have been amplified in the light of the observations made by the Supreme Court in the case of Pannalal Binjraj *vs.* Union of India [31 ITR 565.]

Clause 130 is a new provision to make it clear that the Commissioner to whom jurisdiction over a case is transferred is the authority entitled to prosecute or defend appeals and for passing revision orders.

Clause 131.—Sub-clauses (1) and (3) correspond to section 37(1) and (3) of the existing Act. Sub-clause (2) is new (compare Rule 12 of Order 16 of the Code of Civil Procedure, 1908).

Clauses 132 and 133 correspond to sections 37(2) and 38 of the existing Act with minor drafting changes.

Clause 134 reproduces section 39 of the existing Act with the modification that the person authorised to inspect a company's register should be subordinate to the officer authorising such inspection.

Clause 135 brings out the substance of the latter half of section 5(7B) of the existing Act.

Clause 136.—This corresponds to section 37(4) of the existing Act.

Clause 137 incorporates the provisions contained in section 54 of the existing Act with certain additions. These are:

Sub-clause (3)—*Items (vii) and (xviii)*.—The provisions of section 54(3) (g) and (o) have been elaborated to cover disclosure of information to Courts also.

Item (viii) is new and is intended to permit disclosure of information to a Commission of Inquiry appointed under the Commission of Inquiry Act, 1952.

Item (xiii) is new and is intended to authorise disclosure of information required in connection with the levy or realisation of other Central taxes.

Item (xx) implements the recommendation of the Direct Taxes Administration Enquiry Committee at paragraph 7:53 of its report.

Sub-clause (5).—This is new and is intended to make it clear that the privilege conferred by the section can be waived by the assessee. An explanation has also been added to define the expression "Public Servant" occurring in this section. This has become necessary in view of the conflicting decisions in 10 I.T.R. 429 and 18 I.T.R. 388.

CHAPTER XIV

PROCEDURE FOR ASSESSMENT

Clause 139.—This clause corresponds to section 22 of the existing Act relating to filing of returns of income by assessees. The major change made in this clause is the deletion of the provision contained in section 22(1) of the existing Act for the issue of a general public notice calling upon assessees having taxable income to file their returns. This is in implementation of paragraph 2.12 of the Direct Taxes Administration Enquiry Committee's Report.

The proviso to sub-clause (1) gives effect to the suggestions made in paragraphs 2·10 and 2·11 of the Committee's report with a slight modification as to the date from which interest is to run.

Sub-clause (2) corresponds to section 22(2) of the existing Act with slight drafting changes. The proviso to this sub-clause makes it clear that when the assessee obtains extension of time for filing the return beyond 30th September of the year, he is liable to pay interest.

Sub-clause (*3*) corresponds to section 22(2A) of the existing Act with certain minor drafting changes.

Sub-clauses (*4*) *and* (*5*).—Existing section 22(3) has been split up into two clauses. Sub-clause (4) deals with cases where no return has been filed within the time-limit allowed under section 22(1) or 22(2) of the existing Act and sub-clause (5) deals with cases where revised returns are filed. An important modification in sub-clause (4) ensures that the right of an assessee to furnish a return "at any time before the assessment is made" does not extend beyond a period of four years which is the time available to an Income-tax Officer to make a normal assessment.

Sub-clause (*6*) embodies the provisions of section 22(5) of the existing Act with the modification that associations of persons carrying on business have also been brought within the scope of the section.

Clause 140 is new and is intended to state comprehensively the position as regards the persons who should sign returns of income in respect of the various kinds of assessees.

Clause 141 embodies the provisions relating to provisional assessment contained in section 23B of the existing Act. Sub-sections (5) and (6) of the existing Act have been transferred to clauses 233 and 234 in the Chapter on collection of tax. The remaining sub-sections have been re-arranged with certain modification to the existing sub-section (*3*). These modifications specify the contingencies under which a firm shall be provisionally assessed as a registered firm, which are at present contained in Notification No. 83 dated 3-9-49 issued by the Ministry of Finance.

Clause 142.—Sub-clause (1) embodies the provisions of section 22(4) of the existing Act with the addition that the previous approval of the Inspecting Assistant Commissioner should be obtained before requiring an assessee to furnish a total wealth statement. It is also clarified that power to call for accounts under this provision applies also to cases where revised returns are furnished under existing section 22(3).

Sub-clauses (*2*) *and* (*3*) are new and self-explanatory.

Clause 143 corresponds to existing section 23, sub-sections (1), (2) and (3). Small drafting changes have been made in sub-clause (1) to bring out that (a) losses to be carried forward are computed and (b) the amount of refund, if any, due to the assessee, are specified in the assessment order. It has also been made clear in sub-clause (3) that the Income-tax Officer shall consider any material which he might have gathered independently, in framing an assessment.

Clause 144 reproduces the operative part of section 23(4) of the existing Act with certain drafting changes. The penal action which the Income-tax Officer may take in the case of a firm at present contained in the concluding portion of the main para of section 23(4) and the proviso have been transferred to clauses 185 and 186, dealing with assessment of firms.

Clause 145 is a redraft of section 13 of the existing Act. This clause deals separately with cases where accounts are correct and complete and cases where they are not so.

Clause 146 is a redraft of section 27 of the existing Act.

Clauses 147 to 153 embody the provisions of section 34 of the existing Act which deal with the power to assess income which has escaped assessment and have been arranged in their logical sequence. The power itself has been placed at the beginning, the requirement of a notice is placed next, and then the detailed provisions contained in the various provisos dealing with the time limit for the exercise of the power are set out. Section 34(3) of the existing Act relating to the period within which an assessment should be completed has been placed separately at the end in clause 153 as it applies not only to assessments under section 34, but also to all orders of assessments or re-assessments under the Act. Certain changes of substance have been made. They are:

(*a*) A notice in respect of cases falling under sub-clause (*a*) of clause 152 [corresponding to section 34(1) (*a*) of the existing Act] may be issued—

(*i*) within a period of eight years from the end of the relevant assessment year; or

(*ii*) when eight years have expired, but not more than sixteen years, from the end of the relevant assessment year, if the escaped income is likely to amount to one lakh of rupees or more in the aggregate for one or more than one assessment year comprised within that period; or

(*iii*) at any time, if the escaped income is likely to amount to fifty thousand rupees or more for the relevant assessment year.

(*b*) For completion of assessments, the following time limits have been proposed—

(*i*) a period of four years from the end of the assessment year, or, eight years from the end of the assessment year, if it is a case falling under section 28(*1*) (*c*) of the

existing Act [clause 271(c)], or one year from the date of filing the return or revised return under section 22(3) of the existing Act, whichever is latest;

(*ii*) in the case of re-assessments under existing section 34(1)(a) [clause 147(a)], a period of four years from the end of the assessment year in which the notice was served, and

(*iii*) in the case of a re-assessment under existing section 34(1) (b) [clause 147(b)], a period of four years from the end of the year in which the income was originally assessable, or one year from the date of service of notice under clause 147(b), whichever is later;

(c) The time-limit laid down for completion of assessments is not to apply:—

(*i*) in the case of a re-assessment to give effect to or in consequence of an order of a higher judicial authority;

(*ii*) in the case of a fresh assessment under existing section 27(clause 146);

(*iii*) where an assessment is to be made on a partner consequent on the re-assessment of a firm.

(*d*) The following periods have to be excluded in computing the time-limit—

(*i*) any time taken in reopening the hearing of a case under the provisions of the proviso to existing section 5(7C) (clause 129);

(*ii*) the period during which assessment proceedings are stayed by an order of a court.

(*e*) Explanations 2 and 3 are new and are self-explanatory. The latter has become necessary in view of the Bombay High Court's judgment in the case of S.C. Parashar *vs.* Vasantsen Dwarkadas (29 of I.T.R. 857).

Clauses 154 *and* 155 embody the substance of section 35 of the existing Act with drafting changes intended to rationalise the provisions. The substantive changes are:

Clause 154.—Provision is made to enable the Income-tax Officer also to apply to the Appellate Assistant Commissioner for rectification of a mistake in the Appellate Assistant Commissioner's order. At present this provision is confined only to the assesse.

Clause 155.—(*a*) A provision analogous to section 35(5) of the existing Act [Clause 155 (2)] has been introduced in respect of the amendment of the assessment of a member of an association of persons.

(*b*) A provision has been introduced for the rectification of the later assessments of an assessee, in consequence of recomputation of loss or depreciation in an earlier assesment under clause 147 (Section 34);

(c) As a corollary to sub-clause (*2*) of clause 36, a provision has been inserted enabling the Income-tax Officer to allow the bad debt in the relevant earlier assessment year.

(*d*) Sub-clause (*7*) has been added to secure that the Income-tax Officer is given power to recompute the distributable income of a company in pursuance of an order under clause 104 (section 23A of the existing Act) within a period of four years from the date of such order.

(*e*) The following sub-sections of section 35 have been omitted—

(*i*) Sub-section (*7*) as it is no longer necessary in view of the revision of section 23A.

(*ii*) Sub-section (*8*) as provision to assess a partner without any time limit consequent on the assessment of a firm under section 34 (clause 147) has been made in clause 153.

(*iii*) Sub-section (*9*) as no longer in force.

Clause 156 is based on section 29 of the existing Act with the addition of the words "fine or any other sum" to "tax, penalty or interest".

Clause 157 corresponds to Section 24(3) of the existing Act.

Clause 158 corresponds to section 23(6) of the existing Act with certain minor drafting changes.

CHAPTER XV

LIABILITY IN SPECIAL CASES

Clause 159 is a redraft of the provisions relating to assessment of the legal representatives of deceased persons contained in section 24B of the existing Act.

Sub-clause (1).—It has been clarified that the liability of the legal representative is to be determined "in the like manner and to the same extent" as the deceased.

Sub-clause (3).—This is intended to remove any doubt as to whether a legal representative is or is not an assessee.

Sub-clause (4).—This is new and is based on section 72 of the South African Income-tax Act. This is a corollary to sub-section (6) which limits the liability of the legal representative to the extent of the estate in his possession. If the legal representative parts with the assets without paying taxes, it is but fair that he should be made personally liable.

Sub-clause (5) is new and applies certain useful provisions in the case of representative assessment.

Clauses 160 to 167.—These deal with the assessments of "representative assessees" covered by sections 40 to 43 of the existing Act. The provisions of these sections have been simplified and recast on the lines of the corresponding provisions in the South African Income-tax Act. For detailed comments and changes, see notes on clauses 169, 170(1), 170(3), 172, and 173 to 177 of the Law Commission's 12th Report. The few further changes made are:

(*i*) The words "or trustee" occurring in section 40(1) of the existing Act have been omitted pursuant to the recommendations of the Law Commission in item 27 of List II on page 76 of its Report.

(*ii*) The word "from" has been added before the words "through whom" occurring in the third line of the existing section 43.

(*iii*) Instead of repeating in extenso the Explanation to section 43, the words "includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer of a capital asset in India" is used, in view of the definition of the word "transfer" in sub-clause (47) of clause 2.

(*iv*) The provision to charge the tax at the maximum rate when the income received by a representative assessee is not specifically receivable on behalf of a beneficiary or the shares of the beneficiaries are indeterminate or unknown, has been given up pursuant to the recommendation in List I (last item on page 66) of the Law Commission's 12th Report. The proposal now is that the assessment will be made as if on an association of persons or at the rates actually applicable to the beneficiaries, whichever is advantageous to revenue.

Clauses 168 and 169 are new and deal with the liability of executors. In order to avoid complications, the residential status of an

executor has been stipulated to be the same as that of the deceased person. These provisions will, of course, be applicable only in respect of income derived after the death of an assessee, the income of the earlier period being governed by the provisions of clause 159.

Clause 170.—This corresponds to the existing section 26(2) with the following changes:—

(*i*) the liabilities of the predecessor and successor have been separately stated. It is further clarified in an Explanation that any capital gains occurring as a result of the succession, will also attract this provision;

(*ii*) in sub-clause (*2*), which corresponds to the proviso to section 26(2), of the existing Act, the words "all the provisions of this Act shall, so far as may be, apply accordingly" have been added to clarify that the liability of the successor is not limited to assessment but extends to any other liability incurred by the predecessor in respect of the income assessed;

(*iii*) it has been provided that where the Income-tax Officer is unable to recover the tax from the person succeeded to, he should record a finding to that effect, and only then will the successor be liable to pay the tax;

(*iv*) sub-clause (4) which corres nds to a part of the main para of section 25A(2) of the existing Act has been brought in here as it deals with succession.

Clause 171 embodies the provisions relating to assessment of disrupted Hindu undivided families contained in section 25A of the existing Act in a simplified form with certain changes. These are:

(*i*) The procedure laid down in this section has been made applicable in cases of partial partition also.

(*ii*) Provision has been made that the Income-tax Officer, while passing an order under this section, should record a finding as to the date of the partition. This, besides avoiding complications, will facilitate assessments for the period before and after partition.

(*iii*) The provision relating to succession in the opening lines of section 25A(2) has been separated and dealt with under clause 170 which deals with succession to business.

(*iv*) The existing provision in section 25A(2), main para, to the effect that the Income-tax Officer shall make assessments on the members or group of members "in accordance with the

provisions of section 23" creates an impression that a special assessment for the purposes of this section has to be made on the member etc. This is, however, not the intention. The section is merely intended to lay down the *liability* of the members for pre-partition income, and does not require that the assessment made in pursuance of his liability should be made separately from the individual assessment of each member. This part of the sub-section has, therefore, been omitted.

(*v*) The Explanation at the end of the clause, though new, lays down well established rules. The clarification that a mere division of income without physical division of property shall not be deemed to be a "partition" has been made to get over the difficulty caused by the decision of the Bombay High Court in the case of Chirandas Kirandas (39 I.T.R. 205).

Clause 172 corresponds to sections 44A, 44B and 44C of the existing Act which relate to shipping. These provisions have been rearranged so as to state the liability first, followed by the method of assessment, exception and savings. The changes proposed are:—

(*i*) In sub-clause (*1*) the emphasis is shifted from the non-resident who carries on the shipping business to the ship belonging to a non-resident. This expresses the intention more clearly c.f. section 129 of the Australian Income-tax Act.

(*ii*) The existing section is silent about the carriage of mail by the ships covered by the section. This has been remedied.

(*iii*) It is clarified that the liability under section 44B arises whether the amount for the carriage of goods, mail etc. are payable in or outside India.

(*iv*) It has been provided that where the Master of a ship is not able to furnish the return under section 44B, he may authorise any other person to furnish the return on his behalf within thirty days of the departure of the ship, provided satisfactory arrangements are made for payment of tax.

(*v*) A time-limit has been laid down for claiming the adjustment mentioned in section 44C of the existing Act.

Clause 173.—This clause deals with the recovery of tax due from a non-resident now dealt with in the first priviso to section 42(1). The changes made are verbal, for a discussion of which see notes on clause 183 at pages 433 and 434 of the Law Commission's 12th Report.

Clause 174.—This corresponds to section 24A of the existing Act, split up and re-arranged. See notes on clause 184 at pages 434-436 of the Law Commission's Report.

Clause 175 is new and gives effect to the recommendations contained in paragraph 5.56 of the Direct Taxes Administration Enquiry Committee's Report.

Clause 176.—This clause embodies a part of section 25 of the existing Act relating to assessment of discontinued business, with the following modifications:

(*i*) a provision has been added to assess income received after cessation of a profession pursuant to the Direct Taxes Administration Enquiry Committee's recommendation in paragraph 7.81 (11);

(*ii*) a provision analogous to sub-clause (*6*) of clause 174 has been included.

Clause 177.—This clause corresponds to that portion of section 44 which deals with association of persons. The redraft sets out more clearly the obligations cast on the members of an association of persons including the legal representative of a deceased person.

Clause 178 is new and is based on the recommendations of the Direct Taxes Administration Enquiry Committee in paragraph 5.64 of its report.

Clause 179 is new and is based on the recommendations of the Direct Taxes Administration Enquiry Committee in paragraph 5.69 of its report.

Clause 180.—This corresponds to section 12AA of the existing Act.

Clause 181.—This is based on the third proviso to section 8 of the existing Act.

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

Clauses 182 to 189 bring together, in one Chapter, provisions relating to assessment of firms in their logical order, with a few drafting changes.

Clause 182.—For Sub-clauses (*1*) to (*3*) see notes on clause 189 in Law Commission's 12th Report on page 439. Sub-clause (*4*) implements the recommendation of the Direct Taxes Administration Enquiry Committee in paragraph 5.72 of its report.

Clause 183.—This corresponds to section 23(5) (b) of the existing Act. The changes are verbal for a discussion of which see notes on clause 190 in Law Commission's 12th Report at page 440.

Clause 184 deals with the provision relating to the procedure for the registration of firms as contained in the existing section 26A and Rules 2 to 6 of the Income-tax Rules. The important changes and additions are:—

(*a*) It is provided in sub-clause (*2*) that an application for registration may be made even after the dissolution of a firm.

(*b*) Sub-clause (*4*) simplifies the provisions of Rule 2 of the existing Rules. Instead of specifying different time limits for the filing of registration applications, the present draft lays down that it shall be made before the end of the previous year, with a proviso that the Income-tax Officer may entertain a belated application in suitable cases.

(*c*) The present procedure by which a firm is required to renew the registration by making a fresh application every year has been done away with in cases where there is no change in the constitution of the firm. It would suffice if the firm furnishes a declaration along with its return that there is no change in the constitution of the firm. This is an accordance with the recommendation of the Direct Taxes Administration Enquiry Committee at paragraph 3.62 of its report.

Clause 185.—This prescribes the procedure to be followed after the application is received by the Income-tax Officer. It is provided that the application should not be rejected merely on technical grounds and an opportunity should be provided for rectifying any defect in the application. Sub-clause (*5*) embodies the provisions relating to refusal of registration in the case of a firm in whose case a best judgment assessment is made, *vide* section 23(4) of the existing Act.

Clause 186 corresponds to Rule 6B of the existing Income-tax Rules with the of addition two safeguards for assessees, namely, an opportunity shall be given to the firm before its registration is cancelled and cancellation shall only be done with the previous approval of the Inspecting Assistant Commissioner.

Sub-clauses (*3*) *and* (*4*) of clause 186 are new and are self-explanatory.

Clause 187 corresponds to section 26(1) of the existing Act. Sub-clause (*2*) which is new defines "change in the constitution of a firm" in clear terms.

Clause 188 is also new and clarifies that in the case of succession to business of one firm by another, the provisions of clause 170 will apply.

Clause 189 embodies the provisions of section 44 of the existing Act in so far as they relate to the assessment of firms which are dissolved or have discontinued their business, with certain drafting changes. For changes made see notes on clause 196 at page 443 in Law Commission's Report.

Sub-clause (*4*) is new and is intended to maintain continuity in proceedings in cases where an assessment has already commenced before the discontinuance or dissolution.

CHAPTER XVII

Collection and Recovery of Tax

Clause 190.—This clause is new and is intended to make it clear that pending regular assessment, tax is deductible at source or payable in advance wherever so provided.

Clause 191.—This corresponds to section 19 and 58(2) of the existing Act.

Clauses 192 to 206.—These clauses incorporate the provisions of section 18 of the existing Act. The substantive provisions for deductions in respect of various classes of income such as salary, interest, dividends etc. are dealt with first, and the incidental provisions like issue of certificates etc., payment of tax by the person deducting etc. are dealt with in the later clauses.

Clause 192

Sub-clause (*1*) corresponds to section 18(2), main para, with slight drafting changes.

Sub-clause (*2*) corresponds to section 18(2B), main para.

Sub-clause (*3*) reproduces the proviso to section 18(2) of the present Act.

Sub-clauses (*4*) *and* (*5*) are new and are intended to point to the deduction in respect of tax on accumulated balance paid to an employee participating in a recognised provident fund and contributions made by an employer to an approved superannuation fund

Sub-clause (6) reproduces the latter part of section 18(2A) of the present Act.

The Explanation to the clause is self-explanatory.

Clause 193.—This reproduces section 18(3), main para, of the existing Act.

Clause 194.—This incorporates section 18(3D), main para, of the existing Act.

Clause 195.—Sub-clause (*1*) incorporates existing section 18(3B), excluding the first proviso.

Sub-clause (2) corresponds to existing section 18(3C). It is clarified that this provision applies to payments of amounts other than interest (including interest on securities, dividend and salary).

Clause 196 reproduces section 18(10) of the existing Act.

Clause 197.—The provision authorising the Income-tax Officer to issue a certificate for deduction of tax at a lower rate, which has been repeated in the existing Act in the provisos to sub-section (2B), (3), (3A), (3B), (3D), and in sub-section (3F) of section 18 has been brought together here with a clarificatory change stating that the provisions do not apply in cases of payments to a company. A new provision in this clause authorises the issue of abatement certificates in respect of super-tax payable on dividends to non-residents. It is further made clear that the Income-tax Officer is empowered to issue a certificate authorising no deduction which is implied in the existing provisions.

Clause 198 reproduces section 18(4) of the existing Act.

Clause 199 incorporates the provisions of section 18 (5) of the existing Act in a modified form, with no change as to substance.

Clause 200 incorporates section 18(6) without any change.

Clause 201.—Sub-clause (*1*) incorporate the provisions contained in section 18(7) with no change.

Sub-clause (2) is new and has been added for imposing a first charge upon the assets of the person deducting the tax, if such tax is not paid into the treasury after deduction. (cf. section 123(6) of the Canadian Income-tax Act, 1948).

Clauses 202 and 203 reproduce sub-sections (*8*) and (*9*) of section 18 of the existing Act.

Clause 204.—Existing section 18, Explanation, has been embodied here with a small drafting change. Item (*iii*) has been amplified so as to cover all sums not chargeable "as salary" or "interest on securities".

Clause 205.—Existing section 7(1), 2nd proviso, provides that where tax is deductible at source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction. This principle is being extended to other kinds of income.

Clause 206.—*Sub-clause* (*1*) is a reproduction of section 21 of the existing Act.

Sub-clause (*2*) is a reproduction of section 58T of the existing Act.

Clauses 207 to 219.—Existing section 18A has been split up for the sake of simplicity into separate clauses and each topic is dealt with separately.

Clause 207.—This clause defines the kinds of income on which advance tax is leviable.

Clause 208.—This deals with the conditions under which the liability to pay advance tax arises, at present contained in section 18A(1)(a). For the sake of comprehensiveness, the case dealt with in existing section 18A(3) has also been brought in here.

Clauses 209 deals with the mode of computation of advance tax contained at present in section 18A(1). For the sake of clarity, the various steps involved in the process have been set out. The two special situations *viz.*, where a non-resident has opted for being assessed on the basis of his total world income and where the assessee sends his own estimate of his income subject to advance tax, have been dealt with in sub-clauses (b) and (c).

The Explanation to the clause incorporates the provisions of existing section 18A(1), second proviso.

Clause 210.—This deals with the order of the Income-tax Officer which fixes the liability to pay advance tax, at present contained in section 18A(1).

Sub-clause (*2*) makes it clear that the instalments are to be mentioned in the notice of demand which is the existing practice also.

Sub-clause (*3*) embodies the third proviso to existing section 18A(1) (a) under which the Income-tax Officer is authorised to issue an amended order in a case where assessment of a later previous year is completed before the close of the financial year.

The proviso to sub-clause (*3*) is pursuant to the recommendation of the Direct Taxes Administration Enquiry Committee in paragraph 33 of Chapter 5 of its report.

Clause 211.—This deals with the instalments in which advance tax is to be paid by the assessee, at present contained in section 18A(1) (a) main para, first proviso and in 18A(1) (b). The provisions are similar to the existing ones except for a slight modification as to the dates which have been advanced by 15 days, in accordance with the recommendation of the Direct Taxes Administration Enquiry Committee, Chapter 5, paragraph 39 of its report.

Clause 212.—This deals with the estimate by the assessee. For the sake of clarity, the provisions of the existing section 18A(2) have been recast in sub-clauses (*1*) and (*2*) indicating the manner in which such estimate is to be framed by the assessee.

Sub-clause (*3*) incorporates section 18A(3) of the existing Act with the drafting changes necessary to bring it in line with sub-clause (*1*).

Sub-clause (*4*) is new and needs no comments.

Clause 213 embodies the provisions of existing section 18A(4) dealing with the method of computation of advance tax on commission receipts with the only material change that the assessee shall pay interest for default in payment of tax at the rate of 4% instead of 6% as at present, as recommended by the Law Commission.

Clause 214.—This incorporates the provisions of section 18A(5) of the present Act which deals with the interest payable by the Government on the advance tax paid by the assessee. This sub-section as amended in 1953, is ambiguous. The main part of the sub-section provides that interest should be paid on any sum paid after 1st April, 1955, "from the date of payment to the date of provisional assessment or to the date of regular assessment as the case may be"; but the second proviso, inserted in 1953, says that for the period beginning with 1st April, 1952, the interest is payable from the

beginning of the next financial year to the date of regular assessment. There is thus a change as regards the *period* for which interest is to be paid. Another change made in 1953 is as regards the *amount* on which interest is payable. While the main para provides that the interest is payable "on any amount payable in accordance with the provisions of this section and paid accordingly" the second proviso, inserted in 1953, provides that for the period beginning with 1st April, 1952, interest is payable only on the amount by which the aggregate of the instalments paid during the financial year *in which they are payable exceeds the tax* under the regular assessment.

As the intention is that the second proviso inserted in 1953 is to govern the whole of the post-1952 period, this clause has been so drafted as to make this clear. It is also clarified that where any interest deferred under clause 213 [existing section 18A(4)] falls to be paid after the expiry of the financial year—*i.e.* after the assessment year has commenced—interest is payable on that deferred instalment, if admissible, from the date of the payment of the amount to the date of regular assessment.

Clause 215 embodies the provisions of section 18A (6) of the existing Act which deals with the interest payable by the assessee, with the following changes:—

(*i*) An assessee shall be liable for interest only if his estimate of advance tax turns out to be less than 75% of the tax eventually assessed, after necessary adjustments. This is in accordance with the recommendations of the Direct Taxes Administration Enquiry Committee at Chapter 5, paragraph 32 of its report.

(*ii*) The percentage mentioned at (*i*) shall be applied after reducing the tax determined on regular assessment "by any amount deducted at source". The method adopted at present is to apply the percentage on so much of the tax as relates to income on which tax has not been deducted at source. This variation is consequent on the changes made in clauses 208 and 209.

(*iii*) Interest shall run from the 1st day of April in the next financial year and not from the 1st day of January of the year in which the advance tax is paid. This change has been made to bring the provision in line with the existing section 18A(5) (clause 214). Consequent on this change, the 4th proviso to section 18A(6) has been omitted.

(*iv*) Interest payable by the assessee has been brought down to 4% from 6% to bring it in line with interest payable by the Government.

Clause 216.—This clause incorporates the provisions of section 18A(7) of the existing Act with only a change in the rate of interest from 6% to 4% to bring it in line with clauses 214 and 215.

Clause 217.—Sub-clause (*1*) embodies the provisions of section 18A(8) of the existing Act with drafting changes to make the intention clearer.

Clauses 218 and 219.—These embody the provisions of sections 18A(10) and (11) with no change.

Clauses 220 to 232.—The provisions relating to recovery of tax by the Department contained in the present sections 45 and 46 have been broken up for the sake of simplicity into various clauses in the draft. The general provisions relating to dates etc. of payment is placed first, and the penalty provisions contained in existing section 46(1) are placed next. Then follow the various modes of recovery. The miscellaneous provisions have been placed at the end.

Clause 220.—This embodies the provisions of section 45 of the existing Act with certain changes. The changes of substance made are:—

(*i*) For the sake of simplicity the time limit for payment has been specifically mentioned as 35 days in normal cases. As a measure of safeguard, it has been provided that this period may be reduced in cases where it will be detrimental to revenue to allow so much time. This is based on the recommendation of the Direct Taxes Administration Enquiry Committee, Chapter 5, paragraph 45 of its report. [Sub-clause (*1*)].

(*ii*) It has been provided that the assessee shall be liable to pay simple interest at 4% per annum from the date of expiry of the time specified in the notice of demand. This is in accordance with the recommendations of the Direct Taxes Administration Enquiry Committee, Chapter 5, paragraph 52, (with a modification in the rate of interest). [Sub-clause (*2*)].

(*iii*) A specific provision has been introduced authorising the Income-tax Officer to extend the time for payment or allow payment by instalments subject to payment of interest as prescribed in sub-clause (*2*). Following this, it has also been provided that the assessee shall be treated as in default of the entire amount outstanding if he defaults in payment of any of the instalments. [Sub-clauses (*3*) & (*5*)].

(*iv*) It has been made clear that the power to treat an assessee who has appealed as not being in default, is confined to

the amount in dispute and it has also been made clear that the power can be exercised even though the time for payment has expired. [Sub-clause (*6*)].

Clause 221.—This embodies section 46(1) of the existing Act for levy of penalty for defaults.

Clause 222.—Existing section 46(2) provides that the Income-tax Officer may forward to the Collector a certificate of arrears and the Collector shall then proceed to recover the amount "as if it were an arrear of land revenue". Since the law relating to recovery of land revenue varies from State to State, a uniform procedure for effecting recovery is now being elaborately laid down in the Bill itself (see the Second Schedule).

Sub-clause (*1*) specifies the possible modes of recovery while sub-clause (*2*) embodies a part of existing section 46(7), Explanation, without any change of substance.

Clause 223.—This is new and empowers the Income-tax Officer to send the certificate both to the Tax Recovery Officer in whose jurisdiction the assessee carries on business and to the Tax Recovery Officer in whose jurisdiction the assessee resides or has any property.

Clause 224.—This is new and provides that the correctness of the assessment shall not be questioned before the Tax Recovery Officer. Sub-clause (*2*) and (*3*) empower the Income-tax Officer either to withdraw or amend the certificates issued.

Clause 225.—This is new. The object is to ensure that the Income-tax Officer and the Tax Recovery Officer remain in touch with each other.

Clause 226.—*Sub-clause* (*1*) is complementary to clause 222(2).

Sub-clause (*2*) reproduces existing section 46(5) with the addition of a restriction to the effect that salary etc. exempt from attachment under the Code of Civil Procedure, 1908, will be exempt from this sub-clause also.

Sub-clause (*3*) incorporates the provisions contained in the existing section 46(5A) with the following changes:—

(*a*) The power of attachment under this sub-clause is extended to joint accounts also. This is in accordance with the recommendation of the Direct Taxes Administration Enquiry Committee, Chapter 5, paragraph 79 of its report.

(*b*) It has been provided that every person to whom a notice of attachement is sent is bound to comply with such notice; further it has been made clear that in case of post office, banking company or insurer, the production of pass book, or deposit receipt or of policy is not necessary before payment is made to the Income-tax Officer.

(*c*) It has been made clear that any lien, charge on alienation of property subsequent to the receipt of the income under section 46(5A) will be void.

(*d*) It has been provided that where a person objects to a notice of attachment on the ground that the sum demanded is not due to the assessee or that he does not hold any moneys, he should do so on oath, and if it is subsequently found that the statement was false, he is liable to the extent of his own liability to the assessee or to the extent of the liability of the assessee, whichever is less.

(*e*) It is clarified that a person who fails to comply with the notice under section 46(5A) will be deemed to be an assessee in default and consequently liable for being proceeded against in the manner prescribed for recovery of tax dues.

Sub-clause (4).—This is new and is intended to enable the Income-tax Officer to apply to a Court holding money belonging to the assessee, for payment of the tax due from the assessee.

Sub-clause (5).—Existing section 46(3) contemplates in certain cases recovery of arrears by the Income-tax Officer by any process authorised by the "municipal law for the recovery of municipal taxes". One of the processes usually found in municipal laws is distraint and sale of movable property. This sub-clause read with the Third Schedule provides for this process. It is unnecessary to provide for the other modes of recovery contained in Municipal Acts, having regard to the provisions contained in the Second Schedule.

Clauses 227 and 228.—These embody the provisions of existing section 46(6), (8), (9) and (10) without any change.

Clause 229.—Existing section 46(7) has been incorporated here in a more concise form.

Clause 230.—This embodies the provisions of existing section 46A with the modification that the liabilities under the Wealth Tax Act, Expenditure Tax Act and Gift Tax Act have been brought within the scope of this section. This is in pursuance of the recommendation of the Direct Taxes Administration Enquiry Committee,

Chapter 7, paragraph 81(8) of its report. An important change made in the proviso to the existing section 46A is that the provisions regarding exemption certificates are applicable only in the case of persons not domiciled in India.

Clause 231.—The time limit for commencing recovery proceedings at present contained in section 46(7), has been dealt with here. For the sake of simplicity and uniformity, the limit has been expressed as commencing from the last day of the financial year concerned. In view of this, the second proviso to existing section 46(7) has been omitted as unnecessary.

Clause 232.—This corresponds to the existing section 46(7), Explanation (part). The only change made here is the clarification to the effect that the Government may also institute a suit for recovery of arrears.

Clauses 233 and 234.—These incorporate the provisions of existing section 23B(5) and (6).

CHAPTER XVIII

RELIEF RESPECTING TAX ON DIVIDENDS IN CERTAIN CASES

Clauses 235 and 236.—These correspond to sections 49B and 49BB of the existing Act.

CHAPTER XIX

REFUNDS

Clause 237.—This corresponds to section 48(1) of the existing Act.

Clause 238.—Sub-clause (1) reproduces section 48(3) of the existing Act.

Sub-clause (2) reproduces section 49F of the existing Act with the addition of guardians in the list of persons entitled to claim refund.

Clause 239.—Sub-clause (1) is new and embodies a provision at present contained in the rules.

Sub-clause (2) incorporates the main paragraph of existing section 50 with drafting changes to express the starting point of limitation in a simple manner. The two provisos to the existing section 50 have been omitted as spent.

Clause 240.—This embodies the provisions of existing section 48(2). It has been made clear that the Income-tax Officer shall make the refund in cases where modification is made as a result

of an appellate or other order without any express claim by the assessee.

Clause 241.—This is new and is intended to give the Income-tax Officer power to withhold refund in proper cases.

Clause 242.—This reproduces existing section 48(4) in a simpler form omitting the obsolete provisions.

Clauses 243 and 244.—These are new and embody the recommendations of the Direct Taxes Administration Enquiry Committee in Chapter 6, paragraphs 9 to 12 of its report, in a modified form.

Sub-clause (1) of clause 243 and sub-clause (*1*) of clause 244 provide for direct refunds and appeal refunds respectively. It has been provided in the Explanation to clause 243(1) that while calculating interest, the period of delay attributable to the assessee shall be excluded. Sub-clause (2) of clause 244 provides for the payment of interest after the period of six months in cases where refunds are withheld under clause 241.

Clause 245.—This reproduces the existing section 49E with the addition of a requirement that the Income-tax Officer shall give due intimation to the assessee before making an adjustment under this clause.

CHAPTER XX

APPEALS AND REVISION

Clauses 246 to 269.—The provisions of the existing Act relating to appeals and revision are to be found scattered in sections 30, 31, 33A, 33B, 66, 66A and 67A. All these provisions have been brought together in this Chapter and have been arranged with reference to the authority to which the appeal lies.

Clause 246.—This corresponds to section 30(1) of the existing Act. Besides drafting changes, the changes of substance are:—

(i) It has been made clear that an objection as to "status" under which an assessee is assessed can also be raised in appeal.

(ii) A new provision authorising appeals in respect of orders under existing section 35, wherever such orders are prejudicial to the assessee, has been added. This is pursuant to the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 4, paragraph 26 of its report.

(iii) An order under section 43 (clause 163) treating an assessee as the agent of a non-resident has been made appealable

(iv) An order under section 18(7) (Clause 201), has been explicitly stated to be appealable. This is in accordance with

the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 4, paragraph 26 of its report.

(v) An order imposing a fine for non-appearance in response to a summons under section 37 of the existing Act, as provided in clause 131(2) has been made appealable.

(vi) An order imposing a penalty under clause 273 for failure to furnish an estimate of advance tax or for deliberately furnishing a low estimate of advance tax has been made appealable.

Clause 247.—This embodies the second proviso to section 30(1) of the existing Act.

Clause 248.—This corresponds to section 30(1A) of the existing Act.

Clause 249.—*Sub-clause* (*1*) reproduces section 30(3) of the present Act.

Sub-clause (2) incorporates the limitation provisions of the existing section 30(2) in a simplified form.

Sub-clause (3) deals with condonation of delays in filing appeals.

Clause 250.—This deals with the procedure in appeals at present contained in section 31(1), (2), (2A), 2nd proviso to 31(3), and (5) of the existing Act. Except for sub-clause (6) which is new, this clause embodies the present provisions with minor drafting changes to bring out the intention clearly. Sub-clause (6), though new, only states the existing practice.

Clause 251.—The provisions of the existing section 31(3) which deal with the various kinds of orders that can be passed by the Appellate Assistant Commissioner, have been incorporated in a condensed form. The Explanation is new and is intended to codify a practice which is well-recognised, namely, that the Appellate Assistant Commissioner is not confined to the points raised by the appellant in the appeal.

Clause 252.—This corresponds to section 5A(1), (2), (3) and (4) of the existing Act, with the following changes:—

(i) A member of the Central Legal Service, not below Grade III, is made eligible for appointment to the Tribunal.

(ii) The proviso to section 5(3) of the existing Act is being deleted and in its place a provision is being made that a person who has served as an Assistant Commissioner of Income-tax for at least three years is eligible for appointment to the Tribunal.

Clause 253.—This corresponds to existing section 33, sub-sections (1), (2), (2A) and (3). The additions of substance are:—

(i) Appeals have been provided against imposition of penalty by the Appellate Assistant Commissioner under clause 131(2) (non-attendance in response to summons) and clause 275(2) (abetment of evasion). In regard to the latter, please see notes on clause 275.

(ii) Appeals have been provided against imposition of penalty by the Inspecting Assistant Commissioner under clause 274(2) (penalty in excess of one thousand rupees) and clause 275(1) (abetment of evasion).

(iii) Appeals have been provided against an order in revision passed by the Commissioner under clause 275(2) (abetment of evasion).

(iv) Sub-clause (4) is new and is intended to permit the Department or the assessee to file a memorandum of cross-objections where appeals have been filed. This implements the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 4, paragraph 20 of its report.

Clause 254.—This embodies the provisions of section 33, sub-sections (4) and (6) and section 35, sub-section (2) of the existing Act. The only substantial change made is that powers of enhancement of tax and penalty have been given to the Tribunal, with the proviso that the person concerned shall, before any such order is passed, be given an opportunity of showing cause against the enhancement.

Clause 255 corresponds to section 5A(5), (6), (7), (8) and section 37(4) part of the existing Act, and deals with the procedure of the Appellate Tribunal.

Clause 256.—This corresponds to sub-sections (1), (2) and (3) of section 66 of the existing Act. The changes made are—

(1) the Tribunal is empowered to entertain a reference application received after the stipulated period of sixty days for another thirty days in deserving cases, and

(2) the time within which the Appellate Tribunal should make a reference has been increased from ninety days to one hundred and twenty days.

Clause 257.—This is new and implements the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 4, paragraph 45 of its report.

Clause 258.—This corresponds to section 66(4) of the existing Act.

Clause 259.—This corresponds to section 66A(1) of the existing Act.

Clause 260.—This corresponds to section 66(5) and (6) of the existing Act. In sub-clause (2) it is provided that the fee for making the reference shall now form part of the costs which may be awarded.

Clause 261.—This corresponds to section 66A(2) of the existing Act.

Clause 262.—This corresponds to section 66A(3) and (4) of the existing Act.

Clause 263.—Sub-clauses (1) and (2) correspond to section 33B, sub-sections (1) and (2), of the existing Act.

Sub-clause (3) is new and has been added to get over the difficulty caused by the Bombay High Court in the case of C.I.T. *Vs.* K. K. Solanki case (39 ITR 522).

The explanation is also new and is self-explanatory.

Clause 264.—This corresponds to section 33A of the existing Act without any change.

Clause 265.—This corresponds to existing section 66(7) .

Clause 267.—This embodies the provisions of section 31(4) and of section 33(5) of the existing Act. The existing provisions merely say that the Appellate Assistant Commissioner or the Appellate Tribunal may authorise the Income-tax Officer to make the amendments consequent on the Appellate orders. Since such an authorisation has not been made obligatory, on the part of the appellate authorities, the Department is unable to amend the assessments in cases where no authorisation is made. To remedy this defect, the expression "may pass an order" has been replaced by the words "shall pass an order" etc.

Clause 268.—This embodies the existing section 67A with slight alterations to state the intention more precisely.

Clause 269.—This corresponds to section 66(8) of the existing Act.

CHAPTER XXI

PENALTIES IMPOSABLE

Clause 270.—This reproduces the existing section 44E(6) with slight drafting changes.

Clause 271.—This embodies the provisions of section 28(1) and (2) of the existing Act with certain modifications to implement certain recommendations of the Direct Taxes Administration Enquiry Committee in Chapter 7, paragraph 60 of its report. The changes made are:

(i) the minimum and maximum penalties for the various offences are specified in paragraphs (i) to (iii) of clause 270 (1) instead of the maximum penalty alone being specified in the existing section 28(1);

(ii) the minimum income on which no penalty is now chargeable under section 28(1) (a)—proviso is Rs. 3500. Since it would be more logical to link it with the taxable minimum, it has been replaced by suitable words in paragraph (a) of sub-clause (3).

Clause 272.—This corresponds to existing section 25(2), latter part.

Clause 273.—This corresponds to the existing section 18A(9), modified to give effect to the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 7, paragraph 60 of its report. Accordingly, items (i) and (ii) of this clause mention the minimum and maximum penalties that may be imposed for deliberate under-estimates of advance tax and for failure to furnish any estimate. The margin of error has been increased from twenty per cent. to twenty five per cent. where the assessee furnishes an estimate, in order to bring the provision in line with clause 215.

Clause 274.—Sub-clause (1) corresponds to section 28(3) of the existing Act.

Sub-clause (2) is a modification of section 28(6) of the existing Act based on the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 7, paragraph 63 of its report. Whereas the existing provisions provide that all penalty orders passed by the Income-tax Officer should have the approval of the Inspecting Assistant Commissioner, it is now proposed that the Inspecting Assistant Commissioner himself will pass orders under section 28(1) (c) (deliberate concealment of income) where the penalty imposable exceeds rupees one thousand.

Clause 275.—This is new and implements the recommendations of the Direct Taxes Administration Enquiry Committee in Chapter 7,

paragraph 72 of its report. The provisions proposed are similar to the ones contained in the Income-tax (Amendment) Bill, 1951.

Clause 276.—This is new and implements the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 7, paragraph 63 of its report with the modification that the period of limitation has been increased from one year to two years.

CHAPTER XXII

OFFENCES AND PROSECUTIONS

Clause 277.—This corresponds to section 51 of the existing Act.

Clause 278.—This corresponds to section 52 of the existing Act.

Clause 279.—This corresponds to section 53 of the existing Act except that the power to sanction prosecution has been conferred on the Commissioner instead of on the Inspecting Assistant Commissioner.

Clause 280.—This corresponds to existing section 54, sub-sections (2) and (5).

CHAPTER XXIII

MISCELLANEOUS

Clause 281.—This is new and has been inserted to safeguard the claims of revenue against an assessee who fraudulently parts with his assets to escape payment of taxes.

Clause 282.—This corresponds to section 63 of the existing Act with the addition of "company" and "local authority" to the list. By the addition of a new paragraph (d) to sub-clause (2), it has also been made clear that in the case of an artificial juridical person, the notice may be served on the person who manages its affairs.

Clause 283.—This is new and provides for the procedure to be adopted for service of notice where a Hindu family is disrupted or a firm is dissolved.

Clause 284.—This emobodies the provisions of section 25(6) of the existing Act.

Clause 285.—This corresponds to section 20A of the present Act read with rules 42A and 43A of the Income-tax Rules.

Clause 286.—This corresponds to section 19A of the existing Act.

Clause 287.—This corresponds to section 59A of the existing Act.

Clause 288.—This corresponds to the existing section 61 with the following changes :—

I. After the commencement of this Act only the following persons will be allowed to appear before an Income-tax Authority or the Appellate Tribunal :

(a) any person who was practising as an Income-tax Practitioner "immediately before the commencement of this Act";

(*a*) chartered Accountant or any person who, by virtue of the provision of section 226 (2) of the Companies Act, 1956, is appointed to Act as an auditor of companies in any State;

(c) a legal practitioner who is entitled to practise in any civil court in India;

(*d*) an officer of the scheduled bank with which the assessee maintains his current account or his other regular dealings;

(*e*) any person related to the assessee in any manner or regularly appointed by the assessee.

Thus in future there will be no fresh enrolment of Income-tax Practitioners as defined in clause (iv) of sub-section (2) of section 61 of the existing Act.

II. Officers of the Income-tax Department otherwise qualified to practise are debarred from practising before any income-tax authority for a period of two years from the date of their retirement or resignation. This ban does not apply if the officer retires or resigns within three years of his entering the Income-tax Department. This provision is pursuant to the recommendation of the Direct Taxes Administration Enquiry Committee in para 130 of Chapter 8 of its report, in a modified form.

III. Any authorised representative convicted of an offence in connection with a proceeding under the Income-tax Act or on whom penalty is imposed under this Act, will be disqualified from practice for such period as the Commissioner may determine. This is based on paragraph 137 of Chapter 8 of the Direct Taxes Administration Enquiry Committee Report.

Clauses 289 and 290.—These embody the provisions of sections 62 and 65 of the existing Act.

Clause 291.—This implements the recommendation of the Direct Taxes Administration Enquiry Committee in Chapter 7, paragraph 57 of its report that the Department should be empowered to grant im-

munity from penal proceedings or prosecutions to those persons who have abetted offences but have come forward to give evidence against the assessee. This provision is on the lines of clause 59A of the Income-tax (Amendment) Bill of 1951.

Clause 292.—Under the existing Act, presidency magistrates, magistrates of the first class and magistrates of the second class, if specially empowered, are empowered to take cognisance of offences. [See definition of 'magistrates' in existing section 2(8)]. This clause omits magistrates of the second class specially empowered.

Clause 293 and 294.—These embody the provisions of sections 67 and 67B of the existing Act without any change.

THE FIRST SCHEDULE

In this Schedule are set out the provisions contained in rules 1 to 8 of the Schedule to the existing Income-tax Act with certain changes. Rule 9 of the existing Schedule has been incorporated in clause 44.

Rule 2.—It is clarified in paragraph 2(b) that any expenditure *or allowance* which is not admissible under the existing section 10 will be added back.

Rule 3.—The first proviso to the existing Schedule, rule 3(a), has been omitted, as obsolete.

The second proviso to rule 3(a) of the existing Schedule, says that if any amount reserved for policy-holders is not paid to or expended on behalf of the policy-holders, then the proportion previously allowed as a deduction is to be treated as a part of the surplus. The proportion has been described as "one-half or four-fifths, as the case may be". The reference to one-half is not intelligible on first reading, because the deduction allowed is four-fifths under the main paragraph of existing Schedule, rule 3(a). The text of the rule, as it stood before the amendment made by Act 25 of 1953, contained the words "one-half" and the intention apparently was to cover also cases where a deduction was allowed before the amendment of 1953. Ordinarily speaking, by the time the new Act comes into force cases of deductions under the Act as it stood before 1953 will have been exhausted. However, as a measure of caution, the reference to one-half is retained.

The words "under this Act or under the Indian Income-tax Act, 1922" have, however, been added in order to deal with cases where a deduction under the existing Act is to be adjusted in the surplus under the new Act.

Existing rule 3, clause (b), uses the words "securities or other assets". But the appropriate word seems to be "investments"; that is the word used in the existing Schedule, rule 6, last sentence. The draft, therefore, uses the word "investments".

Existing Schedule, rule 3, clause (c), has been incorporated in the draft sub-clause (c), with minor drafting changes.

Rule 4 corresponds to rule 4 of the existing Schedule.

Rule 5.—(1) This corresponds to rule 6 of the existing Schedule with the following changes:

(*a*) It is clarified that to the profits disclosed in the annual accounts prepared as required under the Insurance Act, 1938, such expenditure or allowance as is not admissible under the provisions of section 10 will be added back. This clarification is necessary in order to secure that depreciation on fixed assets will be allowed only in accordance with the rates prescribed in the Income-tax Act, and gets over the difficulty caused by the Calcutta High Court judgment in C.I.T. Vs. Calcutta Insurance Company [21 I.T.R. 404].

(*b*) A proviso is added that only such amounts written off or reserved to meet depreciation of or loss on realisation of investments as are reasonable will be allowed.

(c) A new provision has been added permitting an allowance for reserves created for unexpired risks. This is in pursuance of the recommendation made by the Taxation Enquiry Commission *vide* para 27 of Chapter VIII of Vol. II of the Report of the Commission.

Rule 6 corresponds to existing rule 8.

Rule 7.—The definition of the words "preceding year" occurring in rule 5 of the existing Schedule has been omitted, in view of the definition of "previous year".

The definition of "securities" has been replaced by a definition of the word "investments".

THE SECOND SCHEDULE

The Schedule deals with the procedure for the recovery of taxes and is mainly based on the provisions of the Code of Civil Procedure, 1908, and the Bengal Public Demands Recovery Act, 1913. The procedure is intended to secure uniformity and identity of consequences from non-payment. At present, the procedure varies from State to State depending upon the local laws applicable.

THE THIRD SCHEDULE

This Schedule deals with the procedure to be followed where movable property is to be distrained by the Income-tax Officer for non-payment of tax. The provisions relating to attachment by the Tax Recovery Officer will apply to distraint effected by the Income-tax Officer himself.

THE FOURTH SCHEDULE

The provisions of Chapters IXA and IXB, of the existing Act relating to provident and superannuation funds and certain new provisions relating to approved gratuity funds are more appropriately grouped together in a separate Schedule.

PART A

Rule 2.—The definitions contained in the existing section 58A are brought in here, the only addition being the definition of "salary".

Rule 4.—In para (e) of this rule, which corresponds to section 58C (1) (d), main para, the words "and of donations if any" and the words "simple and compound" occurring in the clause after the word "and of interest" have been omitted.

Rule 5.—This refers to the powers of the Commissioner to relax requirements set out in rule 4 under certain circumstances and subject to certain conditions. The only change made here is in clause (4) where for the words "Central Government" the word "Board" has been substituted.

Rule 7.—This deals with the exemption to which the employee's contributions are entitled under the present section 58F. The changes are of a drafting nature.

Rule 8.—This corresponds to existing section 58B (2) and lays down the condition under which payment of the accumulated balance due to an employee participating in a recognised provident fund, shall be exempt from tax.

Rule 14 reproduces the provisions of section 58K.

Rule 15.—This rule confers upon the Central Board of Revenue the power to prescribe rules for carrying out the provisions set out in this Part.

PART B

This corresponds to Chapter IXB of the existing Act. The main changes made here are:—

(1) The authority to accord approval for superannuation funds shall be the Commissioner instead of the Central Board of Revenue as in the existing Act.

(2) In clause (a) of rule 3 [which corresponds to existing section 58P(a)] the words "and not less than 90% of the employees shall be employed in India" have been added so as to bring this condition in accord with that for recognising provident funds.

(3) A new clause is added prescribing that all annuities, pensions and other benefits granted from the funds shall be payable only in India.

(4) existing section 58K dealing with—

(*i*) exemption from tax in respect of the income of an approved superannuation fund;

(*ii*) admissibility as deductible expenses from business income of payments to the fund by the employer; and

(*iii*) exemption from income-tax of the contribution made by an employee;

have been split up and are set out in clause 10(25) (iii), clause 36(i) (iv) and clause 87(1) (e) respectively.

(5) Section 58S(1) of the existing Act has been recast to specify that it is the employer who will be taxable on the amount of contributions repaid to him.

(6) Section 58S(2) of the existing Act is modified by deleting the words "but not at or in connection with the termination of his employment".

PART C

This is new. At present payments to gratuity funds are being allowed under the provisions of section 10(2) (xv) and the requirements these funds have to fulfil are governed by executive instructions. As gratuity funds are now being established on a large scale, it is felt that rules governing these funds should find a place in the Act.

FINANCIAL MEMORANDUM

This Bill seeks to replace the Indian Income-tax Act, 1922 and thus no new expenditure apart from what is being spent on the administration of the Indian Income-tax Act of 1922 is contemplated by reason merely of the passing of this Bill. It is possible that at some future date the work now being done by the State Government officers in respect of the recovery of arrears may be taken over by the Income-tax Department. However, it is not possible now to estimate the extent of expenditure which may have to be incurred on that account.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 295 and rule 92 of the Second Schedule, rule 15 of Part A, rule 11 of Part B and rule 9 of Part C of the Fourth Schedule confer on the Central Board of Revenue power to make rules. As in the Indian Income-tax Act, 1922, the power to make rules to carry out the purposes of the income-tax law is conferred not on the Central Government but on the Central Board of Revenue as a matter of convenience. The power to make rules is, however, subject to the control of the Central Government and all the rules have also to be laid before Parliament.

Clause 295 specifies several matters in respect of which rules may be made and most of them are of a routine or procedural character. As in the existing Act power is taken *inter alia* to make rules prescribing the manner in which income is to be arrived at in the case of income derived in part from agriculture and in part from business, the determination of the value of any perquisite chargeable to tax and the percentage on the written down value which may be allowed as depreciation in respect of buildings, machinery, plant or furniture as they relate to matters of day to day administration and it is more convenient to deal with them in the rules to be made under the Act than in the Act itself.

Rule 92 of the Second Schedule authorises the Board to make rules with regard to the manner in which any property sold may be delivered, the execution of necessary documents to complete a sale in execution, the fees to be charged for processes, the mode of attachment of business etc., matters which are purely of a procedural character.

Rule 15 of Part A, rule 11 of Part B and rule 9 of Part C of the Fourth Schedule are intended to authorise the Board to make rules for the purpose of securing such further control over the recognition and administration of provident funds, superannuation funds and gratuity funds as to the Board may seem necessary. In addition to the control provided in the Act itself it may be necessary to impose further conditions in the light of day to day experience with a view to ensuring that these provisions are not abused, and such further control can best be exercised through rules.

The matters on which rules can be made are thus general matters of procedure or detail and the delegation of legislative power is of a normal character.

M. N. KAUL,
Secretary.

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